

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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340

BRIEF FOR APPELLANT

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21154

ROBERT G. BAKER, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

Appeal From the United States District Court for the
District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 22 1968

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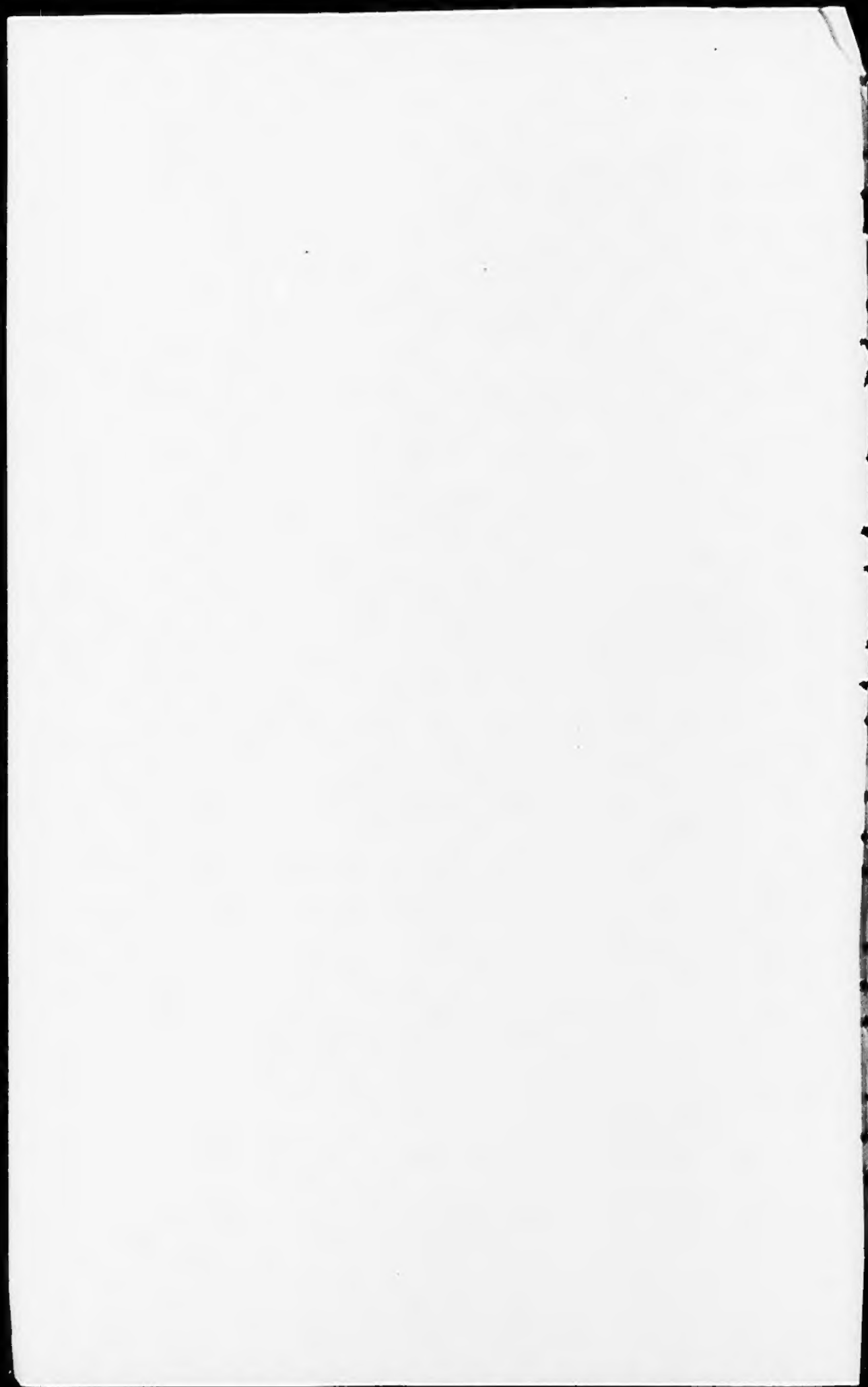
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QUESTIONS PRESENTED

As to All Counts

1(a) Whether Rule 8(a), F.R.Crim.P. permits joining in the same indictment, as offenses of "similar character," two counts charging the accused with two successive years of attempted income tax evasion with two other counts, one charging that he assisted in the making of false statements in the income tax return of another person for a different year, and the other charging him with a conspiracy centering largely upon the income tax return of such other person for such different year and still another different year.

(b) Whether Rule 8(a) permits joining in one indictment, as offenses based on "acts or transactions connected together," a count charging attempted tax evasion with five counts which charge theft of money and allege that a substantial part thereof constituted part of the income on which the tax was allegedly sought to be evaded.

(c) Assuming that the joinder of the four counts referred to in 1(a) is permissible and, further, that the joinder of the six counts referred to in 1(b) is permissible, whether Rule 8(a) permits joinder in the same indictment of the two groups of counts, when, but for the fact that there is one count common to both groups, none of the counts in either group is related to any of the counts in the other group in any of the ways specified in Rule 8(a).

(d) Whether Rule 8(a) permits joinder of nine counts in the same indictment upon the sole ground that all the counts relate either to the illicit acquisition of money by the accused, or to an attempt or undertaking by him to impede the assessment or collection of his or another person's income taxes.

(e) Assuming that the joinder in one indictment of all nine counts referred to in 1(a) through (d) is permissible

under Rule 8(a), whether Rule 14, F.R.Crim.P., entitles the accused to a severance on a showing of prejudice resulting from (1) the great complexity of the numerous charges and the evidence on each, (2) the likelihood of confusion of the evidence among the various counts, (3) the probability of attribution of guilt from one count to another, and (4) the frustration of the accused's announced desire not to take the witness stand as to two counts, but to testify on his own behalf as to the other seven.

2(a) Whether the trial judge may lawfully by-pass the regular list of prospective jurors and order a special list for the trial of the accused.

(b) Whether the summoning of prospective jurors less than "ten days before the term" is lawful under D. C. Code § 11-2306, especially when the defense is thereby deprived of the normal opportunity to check the jury list as an aid to effective voir dire examination and exercise of challenges.

(c) Whether the court, in the absence of the accused and his counsel, may lawfully interrogate prospective jurors about the accused's case and excuse some of them for possible interest or bias.

(d) Whether, in a prosecution of a former high government official, it is permissible for the court, after denying the accused's motion to strike government employees from the jury list, to announce to the prospective jurors that the jury is to be sequestered for the expected two months duration of the trial and then freely to excuse all those claiming hardship, with the result that the ultimate jury consisted of eleven government employees and one government pensioner.

(e) Whether the Jury Commission may lawfully draw the jury list on the basis of answers to a questionnaire about political views, arrest records, treatment for "mental

illness'', and other matters not called for by the statutory standards of qualification or exemption of jurors.

(f) Whether a jury list drawn in compliance with the D.C. Code § 11-2301(b) grant of a blanket exemption for women was constitutionally drawn.

3. When the government, in response to the accused's assertion that he was subjected to massive, illegal electronic surveillance and his demand for suppression of all evidence directly or indirectly obtained thereby, confesses to a number of instances of such illegality:

(a) Whether the court may lawfully deny a full pretrial hearing on the actual extent of the illegal eavesdropping and, in lieu thereof, take on faith an unsigned and unsworn copy of a memorandum from the FBI Director that the confessed instances were the only ones.

(b) Whether the court may lawfully deny the accused the right to inspect any of the records of the confessed eavesdropping except those determined by the court *in camera* to be related to his case.

(c) Whether, assuming that the judge may properly make such a determination *in camera*, he may lawfully delegate part of that function to a brother-judge in no way connected with the case.

(d) Whether the court may lawfully deny the accused a pretrial hearing as to any indirect use made by the government of the conversations overheard by the confessed eavesdropping.

(e) Whether, as to one of the confessed instances of illegal conduct, disclosure of which, according to the government, might endanger national security, the court may lawfully condition the accused's right to a hearing upon a waiver by him of his right to public trial and effective assistance of counsel.

(f) Whether the court may lawfully restrict the hearing to the causal connection between the illegal eavesdropping and the allegations of the indictment, deferring to the trial the connection between the eavesdropping and the evidence the government intended to introduce.

(g) Whether, when a connection between the eavesdropping and the government's evidence appears at trial, it is proper for the court to deny a mistrial, simply instructing the jury to ignore the evidence.

(h) Whether, in a pretrial hearing, the court may lawfully permit the government to introduce affidavits, in lieu of easily callable witnesses, and expurgated copies of documents, in lieu of originals.

As to Count 1 *

4. Whether, in a tax evasion prosecution in which the government has filed a bill of particulars listing the specific items claimed to constitute the alleged understatement, the court may permit the government, after the defense case is in, to introduce evidence of an additional item of allegedly understated income, not listed in the bill of particulars.

5. In a tax evasion prosecution in which the issue is whether certain over-the-counter stock has been held the requisite six months to make the gain on it long-term rather than short-term, when the broker's "trade advices" show a "sale" date two days before the end of the six months and a "settlement" date two days after and an expert witness for the defense testifies without contradiction

* Appellant does not waive the error of the denial of judgment of acquittal on Count 1. It is impossible, however, except at prohibitive length, to state the question in any more communicative form than the statement disapproved by the Court in the footnote to its Rule 17, to wit, "The question is whether there was sufficient evidence to go to the jury."

that date of title passage on over-the-counter stock cannot be determined from the trade advices alone:

(a) Whether the court may properly refuse to instruct the jury that the government has failed to prove that the gain was short-term.

(b) Whether a guilty verdict may stand when the court has failed to give the jury any instruction whatsoever as to the law applicable to the stock transaction.

As to Counts 2, 3, 5 and 7

6. Whether, in a theft prosecution in which the government's theory is that the accused converted to his own use money which he collected for the political campaigns of named candidates, and the defense theory is that he was expected to, and did, deliver the money to an individual who was thereafter to distribute it, and the government adduces the testimony of the named candidates, on direct, that the accused gave them no money, the court may properly prevent the defense from asking, on cross-examination, whether they received money from the individual to whom the accused claims to have delivered the money in question.

As to Counts, 2, 3 and 5

7. When there are two pairs of alternative counts, as to each of which pairs the jury was instructed that it could convict on one count or the other, but not on both:

(a) Whether, when the jury, as to one pair, convicts on one count but is asked for no verdict and returns none on the other, the court may itself enter a verdict on such other count, rather than resubmit it to the jury.

(b) Whether, as to the other pair of alternative counts, when the jury convicts on both counts, the court may itself elect one of the counts for conviction and the other for acquittal, rather than resubmit both to the jury.

As to Counts 8 and 9

8. When the accused, a lawyer, causes his clients to pay his fees by checks issued to another lawyer, who cashes the checks and remits the proceeds to him, and the accused thereafter counsels the other lawyer to include the amount of the fees as "gross receipts" in the Schedule C of his income tax return and then to deduct the amount as "legal and professional fees:"

(a) Whether, the act of counseling the other lawyer so to report the transactions is a felonious counseling of false statements within 26 U.S.C. § 7206(2).

(b) Whether, assuming that the mode of tax reporting counseled by the accused is legally impermissible, the accused commits a felony by counseling it, when he gives such counsel at the specific advice of a tax lawyer and a certified public accountant, both of whom are apprised of all the facts they deem relevant.

(c) Whether it is proper to send the case to the jury without any instructions on the law applicable to the question of the permissibility of the mode of reporting which the accused counseled.

As to Count 9

9. When an 18-page conspiracy count is so complex that, even at the end of trial, both the court and government counsel have difficulty fully understanding it:

(a) Whether the court may properly send it to the jury without instructions as to the specific issues and the rival theories of the prosecution and the defense.

(b) Whether it is proper for the court to instruct the jury, in effect, to disregard the fact that the conspiracy's alleged object was not achieved, in its deliberations as to whether or not the conspiracy ever existed.

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21154

ROBERT G. BAKER, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

Appeal From the United States District Court for the
District of Columbia

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Judgments of conviction were entered against appellant on April 7, 1967, in the United States District Court for the District of Columbia under 18 U.S.C. §§ 371 and 2314, 26 U.S.C. § 7201 and 7206(2), and D. C. Code § 22-2201. Notice of appeal was filed April 14, 1967. Jurisdiction of this court is invoked under 28 U.S.C. § 1291.

STATEMENT OF FACTS*

Background

On October 8, 1963, Robert G. Baker resigned as Secretary to the Senate Majority,¹ and the events which form the basis for the present appeal were set in train. By February 1965, the Senate Committee on Rules and Administration had conducted two investigations of him and his affairs.² In the first alone, it examined 66 witnesses, interviewed 200 persons, examined the records of 32 banks and financial institutions, carried its activity into "31 countries, states, and cities," and compiled a list of 800 persons having relevant information.³

The target of the hearings was Baker. The subject under inquiry was his activities, his life, his business affairs, and, to an extent sufficient to ensure a continuing supply of lurid headlines, assorted rumors of his involvement in malefactions of every description.⁴ Three times he was called as a witness, but because of the then pending Justice Department and Internal Revenue Service investigations and because of the circumstances in which the hearings were being held, he refused on constitutional grounds to answer questions and to produce records.⁵

* In this brief, the Joint Appendix is cited "JA", references to the trial transcript are given by "T.", and to the motions hearing transcript by "M.T." Pretrial conferences are cited "PC," with the date. Defendant's Exhibits are cited DX; government exhibits as GX.

¹ Baker's resignation closed more than twenty-one years of continuous full-time service to the Senate as page, chief page, Assistant Secretary to the Minority, and Secretary to the Majority. JA 864-66.

² Pursuant to S. Res. 212, 88th Cong., 1st Sess., and S. Res. 367, 88th Cong., 2d Sess.

³ S. Rep. No. 1175, 88th Cong., 2d Sess. 12-13 (1964).

⁴ See *id.* at 9.

⁵ *Hearings Before the Senate Committee on Rules and Administration*, 88th Cong., 1st and 2d Sess., pt. 14, at 1304-1363 (1964); *Hearings Before the Senate Committee on Rules and Administration*, 88th Cong., 2d Sess., pt. 2, at 250-68 (1964).

Meanwhile, IRS and FBI investigations continued. *The Washington Post*, in a page one story on November 16, 1963, quoted an FBI official as saying that agents in Washington and a half-dozen field offices were working on the Baker case, and a Justice Department official as saying "there's never been anything to match the Baker case."

On September 1, 1964, a federal grand jury began work in Washington. It sat for 15 months, heard scores of witnesses, and took thousands of pages of testimony. The subject of investigation throughout was Baker. This grand jury, unlike the usual one, addressed itself to no specific suspected crime; it simply listened to witnesses describe all aspects of the life of Robert G. Baker. This tactic of investigating a man, rather than events or offenses, is underscored because it set the pattern for the whole prosecution.

The panoply of charges and insinuations which had filled the headlines for almost three years appeared to wash out in the grand jury process. Instead, the Department of Justice selected, from the grand jury's biographical probing, the following three sets of circumstances.

1. In 1961 Baker was involved in a number of professional and business transactions. In addition there were transactions in the name of Mr. Ernest Tucker, an associate of Baker's in law practice. By selective combination of certain of those transactions, Baker could appear to have underpaid his 1961 income tax by about \$1,000.

2. In 1962, certain representatives of California savings and loan interests had delivered to Baker, purportedly as political contributions, a total of about \$100,000. If he had kept the money for himself, he was guilty of some form of theft and could be shown, moreover, to have underpaid his 1962 income tax by about \$7,400.

3. In 1963 and 1964, Baker became entitled to certain fees from clients. He arranged for the fees to be paid to one Wayne Bromley and then remitted by the latter to him. He counseled Bromley to report the amount of the fees as gross receipts in his tax returns and then to deduct it as professional fees paid. Baker, for his part, included the money in his tax returns and paid the proper tax thereon.

The Indictment

These three sets of circumstances, none related to either of the others, became the basis of the nine-count indictment returned on January 5, 1966. JA 2.

Set No. 1 produced Count 1, a charge under 26 U.S.C. § 7201 of attempting to evade \$1,042.61 in 1961 income tax.

Set No. 2 produced six counts: Count 2 charging attempted evasion of \$7,406.95 in 1962 income tax; Counts 3 and 4 charging, in the alternative, larceny (D.C. Code § 22-2201) and larceny after trust (§ 22-2203) of approximately \$50,000 from Stuart Davis on October 21, 1962; Counts 5 and 6 charging larceny and larceny after trust of approximately \$17,000 from John F. Marten on October 31, 1962; and Count 7 charging interstate transportation of \$33,000 fraudulently taken from Sidney M. Taper (18 U.S.C. § 2314).

Set No. 3 gave rise to the last two counts: Count 8 charging Baker with violating 26 U.S.C. § 7206(2) by assisting to falsify Bromley's 1963 tax return; and Count 9 attempting, in 18 pages of labyrinthine prose, to charge a conspiracy by Baker, Bromley, and one Clifford Jones to defraud the government in the exercise of governmental functions, 18 U.S.C. § 371, and to make false statements on Baker's and Bromley's 1963 and 1964 tax returns.

Pretrial Motions

The case was specially assigned to District Judge Oliver Gasch. Argument on pretrial motions was set for November 15, 1966, and trial for January 9, 1967.

Pretrial motions included, so far as relevant to this appeal, a motion for severance, a motion for discovery and inspection, and a motion to suppress the government's evidence on electronic eavesdropping grounds.

At the week-long hearing on the motion to suppress, agents of the FBI testified to the massive electronic surveillance which they conducted in Miami, Las Vegas, and Washington, D. C. The government conceded that this electronic surveillance was illegal and unconstitutional. *United States v. Baker*, 262 F. Supp. 657, 663-64 (D.D.C. 1966). It claimed, however, that its unlawful conduct did not produce leads or evidence contributing to the prosecution. The court, after a hearing of narrowly restricted scope, adopted the government's view. See Argument at III, *infra*.

On December 20, 1966, the court denied the motions for severance and, in substance, the discovery and suppression motions as well. *Ibid*. During the trial, renewed severance and suppression motions were denied. The various motions are discussed in detail in the Argument, *infra*.

Jury Selection

On January 4, 1967, defense counsel learned that the court had ordered prospective jurors called especially for this case, in addition to and apart from the regular January 1967 panel. Further investigation disclosed a number of other irregularities in the jury selection process. On Saturday, January 7, 1967, counsel informed the court that a motion raising these questions would be filed as soon as it could be prepared. The motion was prepared that weekend

and filed just before the trial on January 9, 1967, at which time it was denied. JA 388-90.

Also on January 9, 1967, the trial judge informed the prospective jurors, over defense objection, that he was going to sequester the jury. His determination to do so was apparently reached on December 27, 1966, and restated on January 4, 1967. It was carried out, over continued defense objection, after voir dire and the selection of the jury on January 9. JA 339-44; T. 13-15, 197-99.

The Evidence

Rather than hew to the order in which the government put in its case, we summarize the evidence below according to the counts to which it was relevant. Only thus can this nine-count case, involving nearly 100 witnesses and nearly 400 exhibits, even begin to be understandable.

Count One—1961 Income Tax

The government filed a bill of particulars specifying the items of alleged unreported income or improper deductions constituting the claimed understatement of taxable income. JA 25-28.

Item No. 1. The government claimed and Baker conceded that he had failed to report a capital gain of \$1,056.20⁶ from an interest in a Florida real estate investment in association with Senator George Smathers and one of two \$268.75 interest checks received from Senator Smathers on that investment. The gains in question were received by checks with covering memoranda sent by the Senator's secretary. JA 486-97. Appellant showed that the memoranda with which Senator Smathers' checks reached him were on Senate noteheads or letterheads and that his secretary had filed these under "Senator Smathers" in the

⁶ The total of the checks transmitted to Baker was greater than \$1,056.20, but the difference was conceded to be return of capital.

office alphabetical file of all Senators rather than in his personal tax file. Thus, at tax time, when the "tax file" was taken out and given to an accountant, some of the information about some of the Smathers income was not there.⁷ JA 902-05.

Item No. 2. The government claimed that Baker's report of \$8,253.90 of gross receipts in Schedule C of his 1961 return was too low by \$2,641.02.⁸ What should have been included in the Schedule C, according to the government, was the following:

a. *A total of \$7,500 in fees received from one Myron Weiner and from the law firm of Congressman Celler.* There is no dispute as to this item: Baker testified that it was included in the \$8,253.90 he reported. JA 424-25, 450, 868.

b. *A total of \$1,877.36 representing half of Ernest Tucker's fees from two clients.* Appellant denied receiving any split fees from Tucker. Tucker testified on direct that he and Baker and these "two clients in which we split the fees . . . fifty-fifty." JA 454-55. See JA 452-56. On cross-examination, Tucker revealed that he did not actually pay any of these "joint fees" to Baker, JA 463, and that in his grand jury testimony he had said that Baker's share was only \$1,038.16. JA 465-66. Moreover, even the \$1,038.16 did not represent payments to Baker, but rather business expenditures by Tucker on Baker's behalf. *Ibid.* Finally Tucker identified his memorandum of Baker's 1961 income from the practice of law. DX 4. It showed the \$7,500 which appellant included in his Schedule C report. The only other 1961 figure in the memorandum, \$151.68, represented business expenditures by Tucker for Baker. The memo-

⁷ Appellant's account of the events was corroborated by a government witness, a former IRS agent who had prepared Baker's return for the year in question from a file of records Baker had given him. JA 507-08.

⁸ This figure was reduced at trial to \$2,092, when the government made no effort to prove one \$300 item and reduced its claim as to another.

randum made no reference to the fees relied on by the government in this item of its bill of particulars. JA 466-67. Indeed, Tucker carried the full amount of those fees on his books without indicating a participation by Baker and paid income taxes on the entire amount. JA 463; GX 62.

c. "*Defendant's retained portion, \$1,217.56,*" of commissions paid by Borinquen Meat Products, Inc. At trial, the government retreated from this estimate and claimed, through its expert witness, that Baker's income from these commissions was only \$969.13. JA 815. This figure Baker confirmed. However, he testified that he had expenses, applicable to those commissions, consisting of \$700 he had given Jose Benitez by check early in 1961.⁹ JA 870-72. Appellant's correct 1961 Borinquen income, therefore, was \$269.13. Since, through an error of computation, he had included \$753.90 for Borinquen in Schedule C, he had over-reported his income by \$484.77. JA 873-75.

Item No. 3. The government claimed that Baker took two impermissible deductions: one of \$1,200 for rent, and one of \$913.12 for interest.

a. The government stipulated that, during 1961, Baker maintained an apartment at the River House in Arlington, Virginia, and used it for business purposes. JA 954. Appellant testified that the annual rental was \$3,000 and that there were expenses of at least that much for maid service, maintenance, food and liquor. He conceded that other persons contributed about half of the total cost of the apartment. As for the remaining half, which he paid, he felt it was reasonable to deduct at least \$1,200, or forty per cent, as a business expense. JA 900-03, 954, 1033-34.

⁹ Government witness Reina C. de Benitez, wife of one of Baker's co-venturers, testified that payments from Baker to her husband were, to her knowledge, either loans or payments of business expense by Baker for her husband. Moreover, the only business enterprise in which Baker and the Benitezes were engaged in 1961 was Borinquen. JA 445-50. For details of the Borinquen transaction, see JA 428-50.

b. There was no dispute that the \$913.12 payment for which appellant took the interest deduction was in fact made to then Secretary of Commerce Luther Hodges. Baker and Seby Jones were each $\frac{1}{3}$ partners with Hodges in the construction of a Howard Johnson motel in Charlotte, North Carolina. In June of 1961, Hodges asked to be bought out for "the exact amount I have paid in" plus "interest on amounts paid in . . . at the rate of six (6) per cent." JA 688-89. Baker and Jones did buy out Hodges for the amount asked. Jones then wrote Baker that the amount paid included \$1,826.24 as interest. JA 687-90, 879-89; DX 13, 14. Baker understood from this that he was entitled to take one-half the amount, \$913.12, as an interest deduction. Technically, as Baker's accountant testified, the money paid to Hodges was not interest, but should have been treated as an increase in Baker's investment, which would reduce his capital gain on ultimate disposition of the investment. JA 1152.

Under the accepted principle that attempted tax evasion requires a showing that more tax was due than was reported, appellant introduced evidence of certain errors in his 1961 return, correction of which would tend to reduce the amount of tax due. That evidence, consisting of Baker's testimony, based on his records, and the analysis of an expert in accountancy and taxation, showed the following:

1. Baker was entitled to a Sick Pay Exclusion of \$500 and had taken only \$400. JA 895-96

2. He had neglected to subtract from his long-term capital gains for 1961 his \$4,986.45 share of a capital loss resulting from a sale of two houses by him and Seby Jones, his partner in the North Carolina motel venture.¹⁰

¹⁰ JA 889-95; DX 16, 17; JA 1146-47. Baker also failed to take a realty tax deduction of \$82.32 in connection with this sale. JA 895, 1153; DX 17. The government contended, through cross-examination of the accountant, that Baker was not entitled to a capital loss on the houses in 1961, but rather should have deferred recognition of the loss until such time as he disposed of his entire interest in the business venture. This contention was rebutted by appellant's expert. JA 1167-69.

3. He had neglected to deduct interest of \$1,702 paid to the First National Bank of Dallas, JA 896-900, 1322; DX 18, 19, 20; he had under-claimed by \$118.75 the interest paid to the Fenwick Corporation in connection with the Carousel Motel, JA 905-08; DX 21, 22; and, he had not deducted \$75 for interest paid in connection with the two houses in North Carolina. JA 895.

As a result of Baker's errors, according to the testimony of his expert, he had overreported his 1961 taxable income by \$2,719.32. Actually his allowable deductions exceeded his gross income by \$364.54. JA 1154-55.

The Government's "Rebuttal" Evidence

In March 1961, appellant, in partnership with Robert Thompson of Dallas, Texas, purchased 500 shares of Investors Diversified Services ("IDS") stock, which he sold at a profit in October 1961. He reported the profit thus realized as a long-term capital gain. The government's bill of particulars claimed no tax impropriety, direct or indirect, in this transaction. Indeed, the transaction was not even mentioned in the government's case in chief.

When, however, appellant showed that he had neglected to take a deduction for the \$1,702 of interest paid on the loan used to purchase the stock, the court, over defense objection, permitted the government to assert, for the first time, that the IDS stock had not been held long enough to make the gain long-term rather than short-term. JA 1036-40.

The government relied on the broker's "advices" showing a purchase "trade date" of April 18, 1961, and a sale "trade date" of October 16, 1961. JA 1320-21. It claimed, therefore, that the holding period was two days short of the required six months, so that the gain should have been treated as short-term, thereby doubling the amount

subject to tax. This would increase appellant's 1961 taxable income by \$7,285.46, about twice the total of all the improprieties listed in the bill of particulars. JA 1170-74.

Appellant's "long-term" treatment of the gain was in reliance on a letter from Robert Thompson stating that the stock had been purchased April 18 and sold October 20. DX 18; JA 897-99, 1322. The defense also pointed out that the sale "advice," although showing an October 16 "trade date," showed an October 20 "settlement date." *E.g.*, JA 1172-73. In addition, the defense introduced a trust receipt executed on October 17, 1961, by the lending bank to protect its collateral interest in the stock pending transfer to the vendee. JA 1324. Appellant's expert testified that in the case of IDS, an over-the-counter stock, the "trade date" alone could not establish the time title passed so that the holding period could not be determined from the evidence relied on by the government. JA 1173-74. The defense then filed a memorandum summarizing all the evidence on the issue and demonstrating that, as a matter of law, the stock had been held from April 18 to October 20, more than the required six months. A defense request for a jury instruction to that effect was denied. JA 1325; T. 3029-37. The jury was given no instruction at all on how to determine the holding period.

Although there was no testimony that the "trade dates" determine the holding period (and, indeed, appellant's expert had testified to the contrary), the prosecutor, in his summation, asked the jury to "look at the trade dates"—April 18 and October 16—and thereby determine that the gain was short-term. JA 1224-25. After several hours of deliberation, the jury requested a copy of the sale "advice." JA 1230. The defense again adverted, in vain, to its request for an instruction that the holding period was long-term. JA 1235-36. The court did give

the more limited instruction that the IDS transaction was not to be considered as evidence of "fraud", but only on the issue of tax liability. JA 1240-41.

Counts Two Through Seven

The government's theory was that Baker, representing himself as a campaign collector, had induced Kenneth Childs, an officer of the largest stock savings and loan company in the United States, to arrange for the collection of \$99,600 to be given to Baker for use in the 1962 Senatorial campaign; that the money was collected from a number of individuals in the savings and loan industry and delivered to Baker; that Baker stole the money;¹¹ and, treating the money as income to Baker, that he underreported his 1962 income by \$50,000.

Childs testified that Baker made the representations in a meeting with Childs in Washington in September 1962 and that Baker had named Senators Fulbright, Hayden, Dirksen, Smathers, Carlson, Morton and Bennett, and Congressman Wilbur Mills as the candidates to be assisted. JA 534-38. Cf. JA 572.

After the meeting Childs returned to California and, on September 27, met with representatives of the three largest savings and loan combines: Howard Ahmanson of Home Savings and Loan; Sidney M. Taper and Charles Wellman of the First Charter Financial group; and John Marten of the Great Western Financial group. JA 537-39, 600, 603-04. At that meeting, no decision was made that money would be raised. JA 569. There is even some doubt as to whether Baker's name was mentioned. JA 668. Mr. Taper was under the impression that the suggestion about campaign contributions had come from the United States Savings and Loan League. JA 671.

¹¹ Finding that Baker had contributed \$1,000 to the Democratic Senatorial Campaign Committee in 1962, the government retreated to the charge that he had stolen only \$98,600. JA 794-95, 843-44.

Some weeks later, approximately \$100,000 was raised, one-third each by the three groups represented at the September 27 meeting. William Ahmanson, nephew of Howard Ahmanson, raised the Home Savings portion (\$33,000) in cash, as he had been instructed by his uncle, and most of it in \$100 bills. JA 578-85. The Great Western share (\$33,000) was raised by Stuart Davis and John Marten, all in cash and principally in \$100 bills. JA 585-87, 591-93, 599-601, 604-06. The First Charter portion (\$33,000), contributed by Mr. Taper, was also in cash and mostly in \$100 bills. JA 669-70.

On October 18, Stuart Davis arrived in Washington bearing two envelopes. One contained Ahmanson's \$33,000 and the other \$17,100 of the First Western share. Davis called Glen Troop, lobbyist for the United States Savings and Loan League, for instructions and was told to call Baker. On October 21, 1962, Davis gave Baker both envelopes. JA 587-90, 595-96.

On October 31, 1962, John Marten arrived in Washington and gave Baker an envelope containing \$16,200, the balance of the First Western share. JA 600-02, 607.

On November 9, Baker flew to Los Angeles to pick up the First Charter share. Charles Wellman, president of First Charter, told by Troop to expect Baker, met him at the Los Angeles airport and drove him to Taper's office. Taper handed Baker an envelope containing \$33,300. JA 664-65, 666-67, 669-70, 672-73.

Taper, Marten and Davis each testified that they had intended the money to be used in the campaigns of Senators. The government then called the Senators and the Congressman mentioned by Mr. Childs and each of them testified that Baker had given him no money in the 1962 campaign. Objection was sustained to defense counsel's question whether any of them had received any money from Senator Robert S. Kerr of Oklahoma. JA 609-19.

The prosecution supplemented the foregoing evidence with testimony that Baker had large quantities of \$100 bills in his office on several occasions during the fall of 1962 and that his Carousel Motel was in financial trouble. JA 515-33. See T. 1232-39. The government asked the jury to conclude from this evidence that Baker had stolen the money.

Appellant testified that he had collected the money on behalf of Senator Kerr and had, as expected by the contributors, delivered it to the Senator. He denied that he had stolen any part of the \$99,600.

The defense showed that Baker, who was indeed in financial trouble in 1962, had gone in July 1962 to Senator Kerr and then the Senator Lyndon Johnson for assistance in obtaining loans. Senator Kerr arranged a \$250,000 line of credit for Baker from a bank in which he had an interest, the Fidelity National Bank of Oklahoma City. Kerr also agreed to lend Baker \$50,000, \$10,000 of which he gave him on the spot. In the fall of 1962, Kerr advanced the balance of the \$50,000. Baker testified that Kerr forgave the \$50,000 debt in December of 1962. JA 909-52, 954-58. The government has conceded that, if Baker did not keep the \$99,600, and if he received only \$50,000 from Kerr in 1962, his 1962 income tax return overstated his income. JA 849-50.

Cross-examinations of the savings and loan tycoons illuminated certain aspects of the \$99,600 contribution which the prosecution had studiously left dark.

Childs was in Washington in 1962, along with several hundred other savings and loan executives, to lobby against a pending bill which would have dramatically changed the tax liability of savings and loan companies. Childs had a central role in the lobbying as Chairman of the Committee on Procedures of the United States Savings and Loan League, a trade association of the vast majority of savings and loan companies. Another central role was played by

Glen Troop, vice-president and permanent Washington representative of the League. The House, under the leadership of Ways and Means Committee Chairman Wilbur Mills, had passed a bill which compromised between the industry and administration proposals. This bill would have increased tax liability for all savings and loan companies equally. The Senate, however, under the leadership of Senator Kerr of the Finance Committee, passed a bill taxing stock companies at a higher rate than mutual associations. Childs testified that the Kerr bill would have discriminated against the stock companies by an amount equal to five per cent of their annual income. This could amount to a sizeable sum for a company such as his, with 1.6 billion dollars in assets as of 1962. The industry, while apparently resigned to the House bill, sought to defeat the Senate version. The three combines here involved, all stock companies, had a direct and immediate interest in the fight. JA 543-59, 569-72, 925-29.

Baker testified that he had introduced Childs to Senator Kerr while the savings and loan bill was pending in the Senate and, at Kerr's request, had later met with Childs in the Carroll Arms Hotel. JA 925-29. Troop, also present at this meeting, heard no mention of any member of Congress except Senator Kerr; specifically, he heard none of the names which Childs testified were mentioned by Baker. JA 1097-99.

The probability that Troop's version of the meeting—not Childs'—is correct is enhanced by the fact that Childs purported to remember, at trial, more of the names Baker is supposed to have mentioned than he remembered in his considerably earlier grand jury testimony. JA 560-63.

Baker testified he next heard of contributions, after this meeting with Childs and Troop, when Troop called to report Stuart Davis' arrival in Washington. Baker corroborated Davis' version of their October 21, 1962, meeting.

He also testified that he had called Senator Kerr and, the next morning, delivered the two Davis envelopes to Kerr in the latter's apartment. Baker testified that Kerr had opened the envelopes and counted the money and then asked Baker if he needed money. When Baker replied yes, Kerr counted out \$25,000, as the second installment of his loan to Baker, and said he would replenish the money from his own funds. JA 929-32.

As for the second delivery of money, the envelope received from John Marten on October 31, 1962, Baker testified that he had delivered it, unopened, to Senator Kerr, in Kerr's Washington Apartment on November 5, 1962. JA 932-34.

The records of Kerr's bank show that he entered his safe-deposit box at 10:06 a.m. on October 22, 1962, and at 2:47 p.m. on November 5, 1962, times coinciding exactly with the times of Baker's deliveries of money to him. Those records show, moreover, that these two entries to the box were the only ones made in a seven-year period and that no subsequent entry was made before Senator Kerr's death. JA 1102-06.

On November 8, 1962, after a call to Baker from Senator Kerr, Troop came to Baker's office and arranged for Baker to fly to Los Angeles the next day to pick up the final \$33,300. On November 19, at Senator Kerr's direction, Baker flew to Oklahoma City and delivered the envelope to the Senator the following morning in the Sheraton Hotel.¹² Later Senator Kerr invited Baker to his home in Poteau,

¹² Thereafter, Baker and Kerr flew to New Mexico in the Vice-Presidential plane for the funeral of Senator Chavez. JA 933-38. Marvin Gaut, the government's rebuttal witness, testified that he was at breakfast with Kerr, Baker and several others on the morning in question and did not see an envelope in Baker's hands. The value of Gaut's testimony should be judged in the light of the fact that he could not even recall whether Baker had a suitcase at the table, nor whether Baker checked out of the hotel, as shown by a receipted hotel bill. JA 1194-97, 1201-03; DX 29.

Oklahoma, where, Friday, November 23, he gave him the final \$15,000 of his \$50,000 loan commitment.¹³ JA 944-47.

The savings and loan executives who raised the \$99,600 contribution testified that they had expected that any acknowledgment of it would be made to Troop. *E.g.*, JA 595. Baker's version of the events—that he had delivered the contribution as the donors intended—was corroborated by Troop's testimony that Kerr approached him in the Senate corridor in November 1962 and said, in acknowledgement of the contribution, "We appreciate your folks' help." JA 1099-1100.¹⁴

Kerr died on December 31, 1962. On January 14, 1963, his safe deposit box, which he had not entered since November 5, 1962, was opened, JA 1104-05, and was found to contain \$42,950 in cash. JA 1107-09. The official record of the contents, made by an officer of the D.C. Inheritance Tax Division who supervised the opening of the box, JA 1323, shows the following division of the money (JA 1110-13):

" 3,000 in cash
2,650 in cash
5,000 in cash
16,200 in cash
16,100 in cash"

This breakdown of funds tallies almost exactly with the savings and loan tycoons' contributions and with Baker's testimony about the loan from Kerr.

Thomas Webster gave \$3,000; Robert de Kruif, \$5,000, JA 581-82; Great Western, \$16,000 on October 31, and \$17,100 on October 21.

¹³ Baker's account of the \$50,000 loan from Senator Kerr was corroborated by Fred Black, who testified that the Senator had told him that he had lent Baker \$50,000, advancing it from campaign funds which he would have to replenish in the event Baker did not repay the loan. JA 1177-91.

¹⁴ John Marten testified before the grand jury that receipt of the money had been acknowledged. JA 608-09.

More salient yet, the \$3,000 and the \$5,000 were part of the Home Savings envelope, containing \$33,000, and Baker got \$25,000¹⁵ from that envelope on October 22, which would have left \$8,000. This evidence, combined with the fact that Kerr did not enter his box for *seven years* prior to October 22, 1962, is powerful indeed.¹⁶

Count Eight

Count 8 alleges that Baker helped Bromley make false statements in his 1963 tax return. That return contained a Schedule C, the form prescribed for merchants and professional men to report their receipts.

Bromley, a lawyer, reported \$21,300 on line 1 of Schedule C as the "gross receipts" from his practice and used the same figure as "gross profit" on line 10 of the form. JA 1315. The government alleged that Bromley's report of "gross profit" of \$21,300 was false. But examination of Schedule C (see Appendix B) reveals that, for every professional man, "gross receipts" and "gross profit" *must be the same*, because the intervening lines 2 through 9 do not apply, so that, if the money was "gross receipts", the gross profit figure is correct.

Bromley's gross receipts-gross profit figure of \$21,300 included the following items: \$8,000 from First Western Financial Corporation; \$2,500 from United States Freight

¹⁵ William Ahmanson gave \$10,000; Joel Allbritton gave \$10,000; William S. Hannah gave \$5,000. J.A. 581-83.

¹⁶ In an attempt to refute this strong circumstantial confirmation of Baker's testimony, the government suggested that the close correlation of figures was mere coincidence. It called the Senator's son, Robert Kerr, Jr., who testified that he was present when the box was opened and that the figures represented different denominations of bills in the box, as counted by the various family members, friends and others. JA 1203-05. However, Deputy Register of Wills Arthur P. Smith and Rex McClure of the Inheritance Tax Division were both certain that Smith alone had counted the money, as is his uniform and consistent practice, with others looking on and following the count. JA 1112-13; 1109.

Company; and \$500 from International Marketing Associates. The alleged falsity was that those fees were received not by Bromley, but by Baker. The government showed that the three firms had issued checks payable to Bromley, the proceeds of which were then given Baker by Bromley. This transmission of the proceeds was reflected in line 17 of Bromley's Schedule C, as a deduction of \$11,000 for legal and professional fees. JA 675-86, 691-709, 727-29, 731-49.¹⁷ The government did not dispute that Baker reported the \$11,000 as income to him on his own Schedule C. JA 1289. Thus, Count Eight involves *no tax consequence*. The government's contention was, as it had to be, that the method of reporting was false in some material way other than monetary.

Bromley testified that Baker, assisting him in the preparation of his 1963 return, advised him to treat all the checks from the various companies as "gross receipts", and to deduct the amounts paid over to Baker in order to show the flow of money from himself to Baker. This was necessary, in part, to comport with the information returns (Form 1099), filed by the payor firms, showing payments to Bromley. The return was in fact drawn up in this manner and then taken to a certified public accountant who approved the method of reporting. JA 736-50.

The defense contended, through cross-examination of government witnesses and through the testimony of appellant and his expert witnesses, that the reporting method chosen was entirely lawful under the circumstances. JA 961-78. Appellant's tax counsel and accountant both testified that they had recommended the method and that they had specifically advised appellant to report as he did. On

¹⁷ The government even went so far as to ask Bromley if he had "gross receipts" from the payors. Over a defense objection that this was a question of law, Bromley was allowed to answer no, JA 708-09. When *defense counsel* tried to ask Bromley if he had considered the relevant law in his answer, objection was sustained because, said the court, "it is a question of law"! JA 751-54.

cross-examination the government sought to demonstrate that Baker had not disclosed all the facts to his counsel. However, both the accountant and the attorney testified that they had been given all the *relevant* facts and that the reporting method they had counseled was proper even in the light of such additional facts as the government brought to their attention. JA 1113-38, 1139-42.

Count Nine

This count charges a conspiracy by appellant with Bromley and Clifford Jones, both of whom are named as unindicted co-conspirators. Stripped of its ritualistic impedimenta, the count, in essence, charges a conspiracy to do, for the years 1963 and 1964, what Count 8 charged was done in 1963.

One added fillip, however, was the charge that the scheme entailed, in addition to Bromley's "wash" reporting and then deduction of the money actually going to Baker, an undertaking that Baker would omit "a substantial part" of the said income from his own tax returns. This new feature was generally alleged in Paragraph 6(b)(3) of Count 9, without, however, specifying the transactions or the payments to which it was applicable. For light as to that, we are relegated to the next five paragraphs of the count, purporting to list and specify the component parts of the conspiracy. JA 11 *et seq.*

Paragraph 7 alleges that Bromley was to receive a \$5,000 check in 1963 from Redwood National Bank; that he was secretly to give Baker half of the proceeds; that he, not Baker, was to pay the income tax on that half; and that Baker was to cause Bromley secretly to be repaid the amount of the tax. Paragraph 8 alleges that First Western Financial Corporation was to issue checks to Bromley in the total amount of \$8,000 in 1963 and \$6,000 in 1964; that the proceeds of those checks would go to Baker and that the money would be reported on Bromley's tax returns. Unlike Paragraph 7, there is no allegation that Baker was

to omit this money from his return. Paragraph 9, 10 and 11 alleged that the same treatment as alleged in Paragraph 8 was to be given to checks which would be issued to Bromley by United States Freight Company (\$2,500 in 1963 and \$5,000 in 1964); by International Marketing Associates, Inc. (a series of \$500 checks in 1963); and by Harvey Aluminum (\$10,000 in 1964).

Thus, Count 9 charged two undertakings. One, as we have stated, was the alleged conspiracy to do, for money received in 1963 and 1964, what Count 8 charged was in fact done for the money received in 1963. The ultimate question, as to that facet, is whether Bromley's form of tax reporting was permissible. The other alleged undertaking was that, as to a substantial part of the money, Baker would exclude it from his tax returns. It was never disputed that this alleged undertaking was not executed and that Baker did, in fact, report as his income all sums reaching him through Bromley.

The first fee Bromley received was \$5,000 from Redwood National Bank in March of 1963. In August 1962, Bromley told Baker that a group in California, seeking a bank charter, was offering a \$5,000 fee if the charter could be expedited. Bromley accepted the retainer. The charter was obtained and the \$5,000 fee was paid the following March. JA 659-61; GX 154. Bromley endorsed the check and asked Baker, who had check-cashing privileges in the Senate Disbursing Office, to cash it for him. Baker cashed the check and received half the proceeds from Bromley.

Bromley said this was a fee splitting. He further testified that Baker told him, at that time, to report the whole \$5,000 as his income, promising to reimburse him for the taxes he would have to pay on half of it. JA 676-80. Baker denied any fee splitting arrangement, or any undertaking to reimburse Bromley for any taxes. He confirmed that he advised Bromley to report the whole \$5,000, but that he did so at tax time, not when the money was received. Baker testified that he regarded the \$2,500 from Bromley as par-

tial repayment of money Bromley had owed him over the years. Baker's tax counsel advised him that it was politic for persons under tax investigation to overpay taxes whenever there could be any question of liability. They advised him, accordingly, to report the \$2,500 as income, even though he claimed it to have been repayment of a loan, and to tell Bromley to report the whole \$5,000 as income, against the contingency that IRS might agree with Baker's position that the \$2,500 payment had, indeed, been repayment of a loan. Following this advice, Baker reported the \$2,500 on his 1963 return, filed in October 1964. Then, two months later, when he was helping with Bromley's 1963 return, he passed on the advice and Bromley reported the whole \$5,000. There was thus an overreporting of \$2,500 to the government. JA 960-63, 973-74, 1117-18, 1136, 723.

The next alleged fee arrangement was in regard to First Western Financial Corporation. This, incidentally, is the only part of the conspiracy in which Jones was alleged to have been involved. As already noted, the indictment did not allege, as to this transaction, any undertaking for Bromley to pay the tax and then have it secretly refunded. Nevertheless, Bromley was permitted to testify, over defense objection, that, at a meeting he had with Baker and Clifford Jones in April, 1963, at the Thunderbird Hotel in Las Vegas, it was agreed that Bromley was to report as his own income the \$10,000 from First Western and Jones was then to send him an additional amount to make up the tax. JA 681-86. Baker denied this version of the Thunderbird meeting. JA 963-65. In any event, there were eight \$1,000 First Western checks to Bromley in 1963 and six in 1964.¹⁸ Bromley claimed that, in each case, Baker or his secretary gave him the check and he endorsed it and turned the proceeds over to Baker.¹⁹

¹⁸ The total actually paid was thus \$14,000. See JA 773-77.

¹⁹ JA 691-93. As to one of the checks, Bromley kept the proceeds, ostensibly as a "loan." JA 693.

Bromley also testified to a Los Angeles meeting with Baker and Jones, at which Jones had said that Bromley should continue to maintain that the First Western money had been given to Baker without Jones' knowledge. Also, Jones told Bromley, when the two were alone, that he would pay the amount of the tax on the 1964 First Western payments to Bromley and that Bromley should report the money as his income. JA 714-18.

Baker denied any agreement for Bromley to pay tax on Baker income. He testified that his reasons for using Bromley as an intermediary in 1963 and 1964, just as for using Tucker in 1961 and 1962, were that he was not a member of the District of Columbia bar and that he had been told by his superiors in the Senate not to engage in private practice. JA 964-65. Moreover, as Keith Linden testified in connection with the Harvey Aluminum transaction, *infra*, after Baker's resignation and in the midst of the attendant publicity, no one could retain Baker without using an intermediary. JA 795-804.

In August 1963, the two agreed that Bromley would be the nominal recipient of Baker's fees from the United States Freight Company. The same pattern was followed with these checks as with the First Western checks. Most of them Bromley cashed, giving the proceeds to Baker. The proceeds of one, that of October 1963 Bromley kept. On three of the checks Bromley's name was signed by Baker's secretary, Carol Tyler. Bromley testified that he had not authorized anyone to sign his name, but this testimony was contradicted by Baker. JA 693-99, 1031.

A similar arrangement was followed with respect to Harvey Aluminum. Keith Linden, Harvey's Washington counsel, testified that he wanted Baker's services in 1964 on an international bauxite agreement. However, because of the Baker publicity, he felt that public knowledge of the retainer might hurt his company. Therefore, when Baker

suggested that fees be paid by checks in Bromley's name, Linden readily agreed. JA 789-92, 796-99.

Bromley signed and cashed the Harvey checks and gave the proceeds to Baker.²⁰ The proceeds of one, Bromley retained. JA 699-701. On three of the checks, the Bromley endorsement was signed by Carol Tyler, JA 1031.

The Verdict and Judgment

The court instructed the jury, as to Counts 3 and 4, that they could find the defendant "guilty of one offense, or the other, but not both." T. 3326; see also T. 3334. A similar instruction was given as to Counts 5 and 6. T. 3342-43.

When the jury announced that it had agreed upon a verdict, the clerk formally asked the foreman of the jury for the verdict, count by count, but omitted Count 4. As to the eight points inquired about, the foreman replied, "Guilty." On polling, the jurors confirmed that they had found appellant guilty on all the counts of the indictment except Count 4. JA 1242-43. The clerk asked for no verdict on Count 4 and none was given.

After the polling of the jury, defense counsel stated:

"Your Honor, I don't think a verdict was returned on one of the counts."

The Court replied:

"Two of the counts. As a matter of law, there will be a finding of not guilty. The larceny after trust counts is a matter of law; the verdict is not guilty because of the instructions of the Court." JA 1243.

On April 7, 1967, appellant was sentenced to one to three years on each of seven counts, concurrently. JA 1339-40.

²⁰ A similar arrangement was reached with International Marketing Associates, though there is a dispute whether a fee was actually paid. JA 965-67, 699.

STATUTES INVOLVED

See Appendix A, *infra*.

STATEMENT OF POINTS

1. The court erred in denying (a) appellant's pretrial motion for severance of his nine-count indictment for misjoinder under F.R. Crim. P. 8(a) and prejudicial joinder under F.R. Crim. P. 14, and (b) his motion for mistrial based upon prejudice resulting from the joinder.

2. The court erred in summoning, in violation of D.C. Code § 11-2306, a special jury panel to hear appellant's case, in interrogating the jurors in the absence of appellant and his counsel as to their attitudes toward appellant's case, and then in using an easy-excuse policy and a sequestration order to produce a jury of government-employed volunteers. Further, the jury list from which the panel was drawn was made up by the jury commissioners in a manner which tends to the subversion of the jury as a cross-section of the community.

3. The court denied appellant an adequate pretrial hearing on the government's admitted illegal electronic surveillance. When the failure to grant such hearing led to government use at trial of material illegally overheard, the court erred in denying appellant's motion for a mistrial. As to one admitted illegal surveillance, the court erred in denying a public hearing, on the asserted ground that disclosure would endanger national security.

4. The court erred in not directing acquittal as to Count 1, as the evidence of wilful evasion of a substantial amount of tax due was insufficient to support a conviction. Moreover, the court permitted the government to introduce an alleged item of deficiency deliberately withheld from the pleadings and its case-in-chief, and then refused to instruct the jury on the law applicable to the issue thus raised.

5. The court denied the right to cross-examine eight government witnesses on the subject of their direct testimony, thus requiring reversal as to Counts 2, 3, 5 and 7.

6. The judgments of conviction entered on Counts 3 and 5, (and derivatively, on Count 2) must be reversed because they are based on verdicts found by the court in usurpation of the jury's function.

7. The conviction as to Count 8 must be reversed, because (a) the count fails to state an offense, (b) appellant's unchallenged proof of reliance on advice of tax counsel required acquittal, and (c) the court refused to instruct the jury as to the law and the rival theories.

8. The court failed to give adequate instructions on the law applicable to Count 9's verbose allegations, and on the relevance of the nonconsummation of the conspiracy on the issue whether a conspiracy ever existed.

SUMMARY OF ARGUMENT

Appellant's counsel regret the abnormal length of this brief. They are aware that brevity would more effectively serve appellant's cause. The great length of the brief, as counsel informed the Court in obtaining leave to exceed the bounds set by Rule 17(e), is attributable to the extraordinary circumstance that the case, by any reasonable test, is essentially a conglomerate of at least three completely unrelated prosecutions, each of considerable factual and legal complexity. To some degree, moreover, the inordinate number of the trial court's serious errors rendered normal briefing impossible.

Of the "Argument" which follows, Points I, II and III apply to all seven counts upon which judgment of conviction was entered; Point IV relates only to Count 1; Point V to Counts 2, 3, 5 and 7; Point VI to Counts 2, 3 and 5; Point VII to Count 8; and Point VIII to Count 9.

Point I. Appellant was forced to trial on all nine counts of the indictment despite his timely motion for severance of

counts for misjoinder under Rule 8(a), F.R. Crim.P., and prejudicial joinder under Rule 14. The denial of the misjoinder aspect of the motion was erroneous, because (a) Counts 1 and 2, charging attempts to evade appellant's 1961 and 1962 income taxes, are not, as held below, of "similar character" to Count 8, charging assistance in the making of false statements in Bromley's 1963 return or to Count 9, charging an extremely complex conspiracy centering largely upon Bromley's 1963 and 1964 returns; (b) Counts 3 through 7, charging theft of the savings and loan contribution, were not as held below, based on "acts or transactions connected together" with those upon which Count 2 was based; (c) even if Counts 1, 2, 8 and 9 were joinable and if Counts 2 through 7 were joinable, the overall joinder of nine counts was invalid, since Counts 3 through 7 bore no relation, by character or transaction, to Counts 1, 8 and 9; and (d) the law recognizes no such general criminality theory as was used below to sustain joinder of counts charging essentially dissimilar and unrelated crimes. The misjoinder of counts in violation of Rule 8(a) requires reversal, even without any showing of resulting prejudice.

Here, there was prejudice, so that the denial of the Rule 14 aspect of the motion was reversible error. Appellant was subjected to all of the types of prejudice set forth in *Drew v. United States*, 118 U.S. App. D.C. 11, 14, 331 F. 2d 85, 88 (1964). He suffered from the jury's inevitable cumulation and inter-relation of the evidence on the different counts and its imputation of guilt from one count to another. He was confounded in his defense in that he could not, as he desired, stay off the witness stand as to Counts 8 and 9, while testifying in his own behalf as to the other counts. Moreover, as may be seen from the gossamer character of the government's case on each individual count, this multiple joinder had its designed effect of generating enough hostility against appellant to produce guilty verdicts on all counts, when, had they been separately tried, he might well have been acquitted on each.

Point II. By a whole catalogue of subversions of the normal procedure for jury selection, the court deprived appellant of his right to trial before an impartial jury. On the eve of trial, in violation of D.C. Code § 11-2306, the court ordered a special panel of prospective jurors drawn for this case, the regular January panel being relegated to other cases. Such checking of the names on the regular January list as counsel had done was wasted and the violation of the § 2306 ten-days-before-the-term provision deprived counsel of any opportunity to check the members of the special panel. One result was that a reserve lieutenant in the Metropolitan Police Department, who denied on voir dire that he was employed by the District of Columbia or that he was "connected with the Police Department" or was "a special police officer", became the foreman of the appellant's jury.

Moreover, the court summoned this special panel before him and examined several members on matters relating to their qualifications to serve *in this case*, actually excusing some for possible interest or bias, all in the absence of appellant and his counsel and not in a public proceeding. This practice violated appellant's Fifth and Sixth Amendment rights.

Disregarding appellant's plea that a government-employed jury would be especially unjust in a case such as his, the court refused to strike government employees from the panel. Then, to make matters worse, it announced to the panel, over defense objection, that the jury would be sequestered for the duration of the trial, estimated at two months or so. Further, the court adopted a policy of liberality in excusing jurors for asserted hardship. As a result, the jury he ended with consisted of eleven government employees and one pensioned former employee.

Even apart from the grossly erroneous departures from normal jury selection procedures, appellant was tried by an illegally impaneled jury: The Jury Commission, for the

purpose of qualifying prospective jurors, used a questionnaire seeking information beyond what is relevant to the statutory standards of qualification or exemption—information, for example, about political views and arrest records. It follows, further, from the unconstitutionality of D.C. Code 11-2301(b)'s grant for a blanket exemption to women.

Point III. Although appellant's suppression motion flushed out a confession that the FBI had illegally eavesdropped on his conversations in Washington, Las Vegas and Miami and, later, a confession of such "bugging" in another place, which, for reasons of national security, had to be kept secret, the court, beyond suppressing certain conversations it found to have been appellant's, refused to restrict the government's proof. The relief thus granted was grossly inadequate because (a) the court permitted no hearing on the extent of the "bugging" of appellant, simply accepting on faith the unsigned and unsworn copy of a memorandum of the FBI Director that the confessed "buggings" were the only ones; (b) appellant was denied the right to inspect the records of the confessed "buggings" to determine the extent to which they related to his case, that determination being made by the court *in camera*, with the added impropriety, moreover, of a delegation of part of that function to another judge who had no official connection with the case and no knowledge of its issues; (c) the court erroneously prevented inquiry into the indirect use made of what was overheard in the confessed "buggings"; (d) as to the secret "bugging", the court denied any hearing at all unless appellant would waive his constitutional rights that it be held in open court and that his counsel be unrestricted in his defense; (e) the court erroneously restricted the hearing to the "causal connection" of the "bugging" to matters specifically alleged in the indictment, deferring until trial, the question of relation of the "bugging" to the government's evidence; and (f) in sustaining the small burden placed upon it, the government was erroneously permitted to use such substandard

proof as affidavits in lieu of easily callable witnesses, and expurgated copies of "bugging" records in lieu of complete originals.

Point IV. A judgment of acquittal on Count 1 was clearly dictated by the evidence. Taking all the evidence on all of the items of income and deduction specified by the bill of particulars as constituting the government's case, no reasonable man could find that appellant wilfully attempted to evade any substantial amount of tax for 1961. It was further error to permit the government to introduce evidence of a purported understatement of income not listed in the bill of particulars and larger in amount than the total of the alleged understatements that were listed. Moreover, despite the great complexity of the essentially legal issues raised by this new evidence, the court refused to give the jury any instructions on the applicable law.

Point V. The issue in the "theft" counts—3 through 7—was whether appellant kept for himself the money contributed by the savings and loan executives, or, as he maintained, delivered it to Senator Kerr as he was expected to do. The seven Senators and one Congressman said to have been the intended beneficiaries of the contribution testified on direct that appellant gave them no money. Appellant's attempted cross-examination as to whether the money reached them indirectly, through Senator Kerr, was prevented by the court as beyond the scope of the direct. This gross error requires reversal of the convictions entered on Counts 3, 5 and 7 and since Count 2 derives from those, the conviction on that count as well.

Point VI. The judgments of conviction entered on Counts 3 and 5 (and, derivatively, Count 2) must be reversed because they are based on verdicts found by the court in usurpation of the jury's function.

Point VII. Count 8 alleged, as to fees paid by appellant's clients to Bromley and then remitted by Bromley to appellant, that it was a felony for appellant to advise Bromley

to include them as "gross receipts" in the Schedule C of his 1963 income tax return and then deduct the amount as "legal and professional fees". Since that method of reporting was legally permissible, Count 8 alleged no offense. Moreover, even if it were an offense to report in that manner, good faith reliance on advice of counsel so to report the transactions would be a complete defense to the charge. Since the government does not dispute the testimony of appellant's expert tax advisers that they had indeed advised reporting in that manner and had based that advice on all the relevant facts, the evidence on Count 8 is insufficient to sustain the verdict. Finally, the only contested issue in Count 8 was whether or not the reporting method used was legally permissible. It was, therefore, clearly erroneous for the court to send that issue to the jury without any instruction on the law.

Point VIII. To the extent that the conspiracy charged in Count 9 embodied the Count 8 charge, the conviction on Count 9, like that on Count 8 founders on the legal insufficiency of the allegation and the court's failure to instruct the jury on the law. The Count 9 conviction should be reversed, moreover, for the court's failure, on a count of such surpassing complexity, to give the jury any light as to the issues and the rival contentions. Furthermore, it was clear error to instruct the jury, in effect, that it could not consider nonconsummation of the alleged conspiratorial objective in determining whether there actually was a conspiracy.

ARGUMENT

IT WAS REVERSIBLE ERROR TO DENY APPELLANT'S SEVERANCE MOTIONS AND COMPEL HIM TO SUBMIT TO ONE JOINT TRIAL OF ALL NINE COUNTS OF THE INDICTMENT.

Joinder of multiple counts in the same indictment is permissible under Rule 8(a), F.R. Crim. P., only if they

"... are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan."

As to counts permissibly joined under Rule 8(a), the court may nevertheless sever under Rule 14, F.R. Crim. P., if "it appears that a defendant or the government is prejudiced" by the joinder.

In his pretrial severance motion, appellant asserted two propositions: (1) that there was *misjoinder* under Rule 8(a); and (2) that, even if no misjoinder, there was *prejudicial joinder* under Rule 14. The trial court denied both aspects of the motion. 262 F. Supp. at 685-88.

The Rule 14 aspect of the motion was denied "without prejudice to its renewal at such time as the defendant makes a decision as to whether he will testify or not." *Id.* at 688. Within a week, appellant had made a decision, reporting to the court on December 27, 1966 that he differentiated between two groups of counts—Counts 1 through 7 and Counts 8 and 9—and wished to testify as to one group but not as to the other.²¹ JA 327-37. The severance problem thus raised was taken under advisement. JA 337. The court ultimately sent the case to trial on all nine counts.

At the conclusion of the government's case, appellant, renewing his motion, asked for severance of Counts 1

²¹ Counsel offered to identify to the court the counts as to which appellant wished to testify and those as to which he wished to remain silent, but desired to keep that information from the prosecutor at that stage of the proceedings. JA 327, 333-34. The prosecutor agreed that he should not be informed. JA 327. The court rejected the information. JA 333-34.

through 7, on which he wished to testify, from Counts 8 and 9, on which he wished to remain silent. The motion was denied. JA 859-63.

A. The Failure To Sever on the Misjoinder Aspect of Appellant's Motion Was Reversible Error.

The court sustained the nine-count joinder by the following reasoning, every step of which we shall show to be fallacious:

(1) It found a concession by appellant that the following subsidiary joinders were proper: Counts 1 and 2; Counts 3 through 7; and Counts 8 and 9. 262 F. Supp. at 685.

(2) It held that Counts 8 and 9 were of "similar character" to Counts 1 and 2 and, therefore, joinable with those counts. *Ibid.*

(3) It held that Counts 3 through 7 were "connected together" with Count 2, by virtue of a complete overlap of proof. *Id.* at 686.

(4) It concluded, therefore, that, since Counts 1, 8 and 9 were joinable with Count 2 by similarity of character and Counts 3 through 7 were joinable with Count 2 by being "connected together", Counts 1, 8 and 9 were also joinable with Counts 3 through 7. *Ibid.*

Then, to fortify its ruling, the court also held that all nine counts "reflect 'a common scheme or plan'" to obtain large sums of money without letting the tax collector know about it. *Ibid.*

1. The Alleged Concession of Joinability.

The so-called concession by appellant's counsel that the case could be severed into three portions—Counts 1 and 2, Counts 3 through 7, and Counts 8 and 9—was directed to the question of *prejudicial joinder*, not *permissible joinder*. At the point cited by the court, 262 F. Supp. at 685, counsel referred to the possibility of confusion involved in a long

trial and suggested "a reasonable severance" in the light of "the basic dictates of fairness." Those remarks, relevant to severance under Rule 14, bear no relation at all to the question of proper joinder under Rule 8(a). The "concession", therefore, was only that, if the court were to hold all the counts joinable under Rule 8(a), appellant's Rule 14 right against prejudicial joinder would require a limited severance as indicated. The court's use of this "concession" as the basis for holding the counts joinable under Rule 8(a) is, therefore, unwarranted and the chain of reasoning linked to it disintegrates. See JA 31.

2. The Allegedly "Similar Character" of the Offenses Charged in Counts 1 and 2 and Those Charged in Counts 8 and 9.

Rule 8(a) permits joinder of offenses of "similar character." The courts, recognizing that such joinder is inherently prejudicial, have limited it very narrowly by liberal application of Rule 14 or its statutory predecessor. See *Drew v. United States*, 118 U.S. App. D.C. 11, 331 F. 2d 85 (1964).²²

²² *McElroy v. United States*, 164 U.S. 76, 79-80 (1896); *Kidwell v. United States*, 38 App. D.C. 566, 570 (1912). This Court's opinion in *Drew* has been described as making "a persuasive argument for generally barring joinder of similar offenses, except perhaps where they would be independently admissible as prior similar acts." 8 Moore, *Federal Practice—Cipes, Criminal Rules*, ¶ 8.05(2), at 8-21. (Emphasis in original). The Supreme Court, in *McElroy*, said:

"... we do not think the statute authorizes the joinder of distinct felonies, not provable by the same evidence and in no sense resulting from the same series of acts." 164 U.S. at 80.

This Court put it similarly in *Kidwell*, 38 App. D.C. at 570:

"It is doubtful whether separate and distinct felonies, involving different parties, not arising out of the same transaction or dependent upon the same proof, should ever be consolidated."

Commentators have agreed that similar character joinder should be used "sparingly", 8 Moore, *Federal Practice—Cipes, Criminal Rules*, ¶ 8.05(2), at 8-21, or abolished altogether, Comment, 64 *Yale L.J.* 553, 566 (1965).

No court ought, therefore, to strain to find similarity among counts that are not really similar, as was done here in finding Counts 1 and 2 similar in character to Counts 8 and 9.

Counts 1 and 2 were standard tax evasion counts for two successive years, 1961 and 1962. Count 9 charged a conspiracy, covering the years 1963 and 1964, of incredible complexity. Statement of Facts, p. 20, *supra*. Indeed, at the end of the trial, the trial court did not yet clearly understand the count and was reserving judgment on a motion to strike a portion of it. T. 3060-69. Nevertheless, it had found no difficulty a month earlier in holding that Count 9 "certainly" was of "similar character" to Counts 1 and 2. 262 F. Supp. at 685. As for Count 8, which charged appellant with aiding the making of false statements in Bromley's 1963 return, the court said it charged accomplishment of one of the illegal purposes of the Count 9 conspiracy and that it was "clear, therefore," that Count 8 was also of "similar character" to Counts 1 and 2. *Id.* at 685-86.

We submit that there is no such imperative similarity of character between Counts 1 and 2, on the one hand, and either Count 8 or Count 9, on the other, as to warrant joinder under Rule 8(a), in the face of a consistent judicial policy narrowly to limit "similar offense" joinder to situations of real similarity. The only similarity of Count 8 to Counts 1 and 2 is that all three relate to income tax returns. They are dissimilar, however, in that Count 8, as compared to Counts 1 and 2, involves the return of a *different taxpayer* and for a *different year*, charged a *different kind of wrongdoing*, and arises from a *different statute*. What we have here said of Count 8 applies *a fortiori* to Count 9, which charges a conspiracy to commit the offenses charged in Count 8 and others too recondite for easy characterization.

The modern approach to "similar offense" joinder is exemplified in *United States v. Quinn*, 365 F. 2d 256 (7th

Cir. 1966). The defendant, a director of a savings and loan association, had been indicted in four counts for misapplying the association's funds. Two counts related to a transaction whereby he caused the association to make a large prepayment of rent to a management company which he controlled. The other two counts related to a transaction whereby he took the association's accommodation check in return for a worthless check of one of his companies. As to both transactions, the same two statutes were involved, 18 U.S.C. §§ 657 and 1006. His motion for severance of the counts relating to the first transaction from those relating to the second was denied and he was convicted on all counts. The Seventh Circuit reversed, rejecting the government's reliance on the similar offense theory. Even though the two sets of counts related to the very same statutory violations with respect to the very same victim, and only three months apart (as contrasted with the long span of this indictment) the court simply stated the facts of the two transactions and, apparently on the basis of the different facts, declared that "the offenses charged in Counts I and II are not the same or similar character as those charged in Counts III and IV and, in our judgment, the Court erred in its refusal to allow defendant's motion for severance on the basis of misjoinder under Rule 8(a)." 365 F. 2d at 264.

This court need not go as far as *Quinn*, to hold that Counts 8 and 9, differing from Counts 1 and 2 as to persons, times, statutes offended and gist of the offenses, were misjoined with Counts 1 and 2.

3. The Alleged "Connection" of Counts 3 Through 7 With Count 2.

Counts 3 through 7 relate to three alleged thefts: one of \$50,000 from Davis on October 21, 1962; one of \$17,000 from Marten ten days later; and one of \$33,000 from Taper on November 9, 1962. Each count alleges that a substantial part of the money was unreported in the 1962 income tax

return referred to in Count 2. Moreover, the government asserted, in resisting severance, that there would be a "complete overlap of proof between Count 2 and Counts 3 through 7." 262 F. Supp. at 686. The court found it "clear" that Counts 3 through 7 were "connected together" with Count 2, because "if a separate trial were ordered for the 'theft' counts, the Government would still be faced with proving those counts in order to establish the source of the defendant's unreported income as charged in Count 2." *Ibid.*

The evidence test employed by the court is less germane to the determination of permissible joinder under Rule 8(a) than to the Rule 14 issue of prejudicial joinder, as to which this Court said in *Drew v. United States*, 118 U.S. App. D.C. at 16, 331 F. 2d at 90:

"If, then, under the rules relating to other crimes, the evidence of *each* of the crimes on trial would be admissible in a separate trial for the other, the possibility of 'criminal propensity' prejudice would be in no way enlarged by the fact of joinder." (Emphasis supplied.)

Assuming that the *Drew* evidence test does not apply in the context of Rule 8(a), there was a fallacy in the court's application of it here, for, as *Drew* shows, there must be *reciprocal* admissibility of evidence.

In proving Count 2, the government might have to prove that appellant stole the sums allegedly not reported as income. It does not follow, however, that, in proving the thefts, it would have to prove attempted evasion of taxes on the stolen money.²³

²³ Indeed, nonpayment of income tax on money, if probative at all on whether the taxpayer received the money, tends to prove that he did not, rather than that he did. Moreover, the evidence of failure to report would be highly prejudicial to the extent that it showed criminal propensity. McCormick, *Evidence*, § 157 (1954); 1 Wigmore, *Evidence*, §§ 193-94 (3d ed. 1940).

The trial court's theory, moreover, would make an income tax evasion count joinable with every prosecution of a profitable crime. In every prosecution of an alleged embezzler, housebreaker, narcotics peddler, bookmaker, abortionist, prostitute, murderer for hire, pickpocket, spy, arsonist or antitrust law violator, the government, merely by alleging the defendant's failure to disclose his illicit gains, could add a count for income tax evasion. This Court, having the broadest federal criminal jurisdiction, would be the chief victim of the procedural emanations from such a juridical potpourri.^{23a} By striking down the instant joinder, the Court can serve notice that such forms of prosecution will not be tolerated.²⁴

^{23a} In argument of the motion below, the prosecutor, at the court's request, undertook to ascertain whether such hybrid joinder has ever been allowed in the courts of any of the states which have income tax laws and to submit a memorandum if he could "find some cases." T. 748. No such memorandum was ever filed. The trial court itself seems also to have searched in vain for a precedent. 262 F.Supp. at 688.

²⁴ The trial court's facile finding of "connection" between the "theft" counts and Count 2 was attributable largely to the government's device of writing an ostensible connection into the second paragraph of each of Counts 3 through 7. The government frankly admitted that the purpose of that paragraph was to give an appearance of joinability with Count 2. It blandly suggested that the paragraph could be regarded as surplusage if the court should feel it made for duplicity in the "theft" counts. T. 659. We submit that the court allowed itself to be led into error.

Rule 8(a) does not authorize joinder on an artificial "connection" between counts, which can often be no more than the prosecutor's rhetoric. It requires a real connection between the *acts or transactions* upon which the counts are based, something which must actually have *happened*. The rule contemplates joinder in the familiar situation where a single act or transaction or a connected set of acts or transactions constitutes more than one crime; not, however, where offenses are based on events not related to each other in the practical sense in which people generally construe the word "connected" in the physical world. This Court's test to determine whether offenses are joinable under the "connected together" clause of Rule 8(a) is whether "there was an unbroken chain of causation between the acts or transactions constituting one of the offenses and those constituting the other." *Scheve v. United States*, 87 U.S. App. D.C. 289, 290, 184 F. 2d 695, 696 (1950).

4. The Fallacious Chain Theory of Joinder.

If, contrary to our showing, joinder of Counts 1, 2, 8 and 9 was proper and, similarly, if joinder of 2, 3, 4, 5, 6 and 7 was proper, this conviction must, nevertheless, be reversed because of the error of sustaining the joinder of all nine counts.

The court cited no provision of Rule 8(a) to support the joinder of the "theft" counts with any of the "tax" counts other than Count 2. Having held the four tax counts (Counts 1, 2, 8 and 9) joinable, the court posed the following test for the whole nine-count joinder:

"If the 'theft' counts, Counts 3 through 7 are 'connected together' with the counts previously discussed, the joinder is proper." 262 F. Supp. at 686.

It then held that the "theft" counts were "connected together" with one of the "tax" counts, Count 2. *Ibid.* But the "theft" counts were *not held* to be connected together with the other three "tax" counts, 1, 8 and 9. Of course, they could not be, for the thefts were all alleged to have occurred in 1962 and those "tax" counts all related to other years.

The court was apparently following the government's chain theory (Memo in Opp. to Severance, p. 5), that counts joinable with the same count are joinable with each other; that is, the three "tax" counts (1, 8 and 9) and the five "theft" counts (3 through 7), being joinable with Count 2, are also joinable with each other.

This novel adaptation of the first Euclidean axiom to the law of joinder does not satisfy Rule 8(a). The Rule permits joinder of offenses if "the offenses" are related in any of the specified ways. By any fair reading of Rule 8(a), *each* count of the indictment must bear one of the specified relations to *each other* count. Presumably not even the government would claim that Counts 1, 8 and 9

could be joined with Counts 3 through 7 if Count 2 were not in the indictment. What then is added by Count 2? It is not like a conspiracy count whose allegations embrace the facts of each of the substantive counts and thus relate each of them to each of the others as parts of a common scheme. The government claimed it to be a link, connected at one end to three of the counts and at the other to five other counts. But, this linking does not comply with Rule 8(a), because the counts at the opposite ends of the link bear no relation to each other.

The government, even if it were right in its contentions that the "tax" counts are of "similar character" and that the "theft" counts are "connected together" with Count 2, had, at most, a choice of joinders: it could have joined together in one indictment Counts 1, 2, 8 and 9; or Counts 2 through 7. By greedily seizing *both* choices and amalgamating all nine counts into this indictment, it violated Rule 8(a).

5. The Fallacious General Criminality Theory of Joinder.

In a portion of one sentence of its opinion, totally unrelated to any prior reasoning or exposition, the court below propounded another and independent basis for the nine-count joinder:

"... [A]ll the counts of the indictment reflect a 'common scheme or plan' whereby the defendant obtained large sums of money which constituted taxable income while concealing the same from the Internal Revenue Service by falsifying the tax returns of himself and others." 262 F. Supp. at 686.

"Common scheme or plan" joinder, under Rule 8(a), requires some allegation of a specific scheme or plan of which the conduct charged in each count was a part. The fact of the indictment itself shows that "all the counts" do not satisfy this requirement, for there is no apparent re-

lation between, for example, Count 1 and the rest of the indictment, or Counts 8 and 9 and the other counts.²⁵

Even without this obvious hole, the court's joinder basket could not contain these nine counts. The very straw from which the basket is woven—a theory of general criminality—falls apart at the touch. The theory attributes to appellant a profession of general criminality consisting of the acquisition—as the government put it, the “surreptitious” acquisition (Memo in Opp. to Severance 2, 5-6)—of money and the concealment of it from the IRS by falsifying his and others' tax returns. The theory then justifies joinder of all counts charging crimes by which money is earned with all counts charging crimes by which the IRS is confounded. Since those who commit crimes for profit usually do not confess their crimes by reporting the profits on their tax returns, the trial court's theory, in one fell swoop, works a joinder of all of their crimes, so long as the indictment also charges a tax crime. No prosecutor has ever thought of joining in a single indictment counts charging the defendant with counterfeiting the currency in January, selling narcotics in February, murdering for hire in March, selling military secrets in April, robbing a bank in May, etc. By the court's theory, there is no reason why this cannot be done, so long as a count is added charging an attempt to conceal the profits from the tax collector the following April—the equivalent of Count 2 here.²⁶ The profit motive—getting and keeping—becomes the basket to hold all the disparate counts and the carefully structured

²⁵ Count 1 is a typical tax evasion count, charging unreported taxable income of about \$5,000.00. JA 2-3. Not only is there no allegation that the unreported income was derived from a criminal source; there is not even an allegation of unreported “income”, for taxable income could very well consist entirely of overstated deductions.

²⁶ Indeed, the court below would allow the joinder even if the tax count is for a previous year, relating to other profits and even if those profits are not derived from criminal enterprise (Count 1). Similarly, a tax count for a later year would seem to be good enough (Count 9). The court would even make do with a count relating to someone else's taxes (Count 8).

"same or similar character" and "acts or transactions" requirements of Rule 8(a) would become superfluous.

The court below cites no authority for its theory. The government, in offering the theory, sought to support it by this Court's decision in *Daly v. United States*, 119 U.S. App. D.C. 353, 342 F. 2d 932 (1964), *cert. denied*, 382 U.S. 853 (1965). (Memo in Opp. to Severance, 6-7)²⁷ All the criminal acts of which Daly was accused constituted parts of the "common scheme or plan" of practicing medicine without proper authority. *Daly* was the typical case of a single course of criminal conduct from which the law permits a zealous prosecutor to construe a multiplicity of offenses. We note that the government did not seek to join any tax counts in *Daly* and we suggest that, if it had added to the 27-count indictment one or more counts charging Daly with seeking to conceal from the IRS the profits from his illicit business, this Court would not have tolerated the joinder.

²⁷ Daly was a "phony" doctor, indicted in twenty-seven counts: Five alleging false pretenses, thirteen charging unlawful practice of the healing arts, five unlawful possession of drugs and four unlawful delivery of drugs. The government, citing *Daly* below, sought to make it appear that this Court has sustained the 27-count joinder on a "general criminality" theory. It quoted the following language from the Daly opinion:

"Since his operations continued over a significant period of time, it is hardly surprising that a *large number of separate statutory* violations were asserted to have occurred, or that these fall into a similar or recurring pattern. We have no difficulty whatever in concluding that the offenses in question fall within both standards for joinder set forth in Rule 8(a)." Memo in Opp. to Severance 6-7 (Emphasis supplied by the government.)

The government omitted the immediately preceeding sentence of the opinion:

"The offense against the community for which appellant has essentially been held to account was that of falsely holding himself out to the public as a licensed physician, and of performing acts in the course of that deception which a layman is forbidden to do." 119 U.S. App. D.C. at 354, 342 F.2d at 933.

6. By Reason of the Misjoinder of Counts in the Indictment the Conviction Must Be Reversed.

Misjoinder of any one of the nine counts of the indictment requires reversal of appellant's conviction. The Court must so conclude without pausing to consider whether the joinder was prejudicial.

Rule 8(a) provides that "offenses may be charged in the same indictment", under certain conditions. The necessary inference is that counts *may not be* joined absent those conditions. Dealing with the similar language of Rule 8(b), covering joinder of defendants, Chief Judge Sobeloff said in *Ingram v. United States*, 272 F. 2d 567, 569 (4th Cir. 1959):

"Rule 8(b) . . . provides that two or more defendants *may* be jointly charged if they are alleged to have participated in the same act or transaction. The necessary inference from this is that they *may not be* jointly indicted or tried in the absence of a common act or transaction. Rule 14 confers upon the trial court discretion to relieve from prejudicial joinder . . . But the joinder of defendants and offenses totally unconnected is prohibited by Rule 8(b). This is not a matter of discretion; both the statutory language and the decided cases make this clear."

He added that misjoined defendants "are prejudiced by that very fact, and the trial judge has no discretion to deny relief." *Id.* at 570. That latter language was quoted with approval by this Court in *Ward v. United States*, 110 U.S. App. D.C. 136, 137, 289 F. 2d 877, 878 (1961). *Accord.* as to offenses and defendants, *King v. United States*, 355 F. 2d 700, 703 (1st Cir. 1966) (citing *Ward*):

"Rule 8 is an attempt to set the limits of tolerance, and any joinder which does not fall within it is per se impermissible."

The denial of severance here was, therefore, beyond the discretion of the trial judge and the conviction must be set

aside. To hold otherwise would be to read Rule 8(a) out of the law, leaving all joinder questions to be decided on the prejudice issue under Rule 14.²⁸ Moreover, once deciding there was Rule 8(a) misjoinder, the Court should reverse the conviction without pausing to consider the possibility that the error may have been harmless. As Chief Judge Sobeloff pointed out concerning misjoinder of defendants:

“Just as Rule 14 does not permit the Government to circumvent the prohibition of Rule 8(b), neither does the Harmless Error Rule, Rule 52(a), have this effect.” *Ingram v. United States*, 272 F. 2d at 570.

Appellant is, therefore, entitled to reversal, without a showing of prejudice from the misjoinder. As we shall show next, however, appellant was prejudiced by the nine-count joinder, and is therefore entitled to reversal under Rule 14.

B. The Failure To Sever on the Prejudicial Joinder Aspect of the Motion Was Reversible Error.

In *Drew*, 118 U.S. App. D.C. at 14, 331 F. 2d at 88, this Court set forth the following elements which tend to make a joinder which is permissible under Rule 8(a) prejudicial under Rule 14:

“(1) [the defendant] may become embarrassed or confounded in presenting separate defenses; (2) the jury

²⁸ *Schaffer v. United States*, 362 U.S. 511 (1960), is not to the contrary. The Court there sustained as non-prejudicial under Rule 14 a joinder of counts involving different defendants. The contention had been made that, with the dismissal at the conclusion of the Government's case of the conspiracy count which had made the joinder proper under Rule 8(b), there resulted a misjoinder, so that the trial judge had no discretion to let the trial proceed. The Supreme Court held, 5-4, that Rule 8 having once been satisfied by the allegations of the indictment, the accused was thereafter protected only by his Rule 14 right to non-prejudicial joinder. The Court did not, however, cast the slightest doubt on the proposition that, on a pre-trial severance motion the accused is entitled to have the indictment tested under the provisions of Rule 8.

may use the evidence of one of the crimes charged to infer a criminal disposition on the part of the defendant from which is found his guilt of the other crime or crimes charged; or (3) the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not so find."

The court below, in deciding that the nine-count joinder was not prejudicial under Rule 14, first considered together items (2) and (3) of the *Drew* elements and then item (1), concluding as to all of them that there was no such prejudice as to require severance. We shall now show that the conclusion was erroneous and the supporting reasoning fallacious.

1. The Prejudicial Effect of Unwarranted Interrelation and Cumulation of Evidence and Guilt.

In disposing of items (2) and (3) of the *Drew* elements, the trial court relied heavily on the "considerable overlap of proof" between Count 2 and Counts 3 through 7 and between Count 8 and Count 9. 262 F. Supp. at 686-87.

If, indeed, the "overlap" between Count 2 and the "theft" counts, for example, was such that "the evidence of each of the crimes on trial would be admissible in a separate trial of the other", it would follow that joining them for trial would not enlarge the possibility of prejudice resulting from the interrelation or cumulation of evidence. *Drew v. United States*, 118 U.S. App. D.C. at 16, 331 F. 2d at 90. As we have already shown, however, the Count 2 evidence would not be admissible in a separate trial of the "theft" counts. Thus, joinder must inevitably have enlarged the possibility of a prejudicial inference of "criminal propensity" and prejudicial cumulation of guilt. This is also true of a joinder of Count 8 with Count 9, for, while the Count 8 evidence could be received in a Count 9 trial, the evidence supporting the ramified allega-

tions of Count 9 would be inadmissible in a separate trial of Count 8.

Even assuming there is no prejudice inherent in the two sub-joinders, Count 2 with Counts 3 through 7 and Count 8 with Count 9, what of the prejudice inherent in the total nine-count joinder? It would be outrageous, for example, if appellant were separately tried under Count 1 for attempted evasion of his 1961 income tax by understanding his taxable income, for the court to receive evidence that he had stolen money and had transported stolen money in interstate commerce the following year. And it is highly doubtful that, in such a separate trial, the jury would be permitted to hear evidence of the alleged falsification of the 1963 Bromley tax return, or of the conspiracy to do incomprehensible things to appellant's and Bromley's 1963 and 1964 tax returns. That the nine-count joinder involved prejudice which would have been absent from separate trials or from joinders of lesser degree simply cannot be disputed.²⁹

Drew leaves the trial court some discretion to deny a pretrial severance motion under Rule 14 even where the evidence supporting the multiple counts would not have been admissible in separate trials, "if from the nature of the crimes charged, it appears that the prosecutor might be able to present the evidence in such a manner that the accused is not confounded in his defense and the jury will be able to treat the evidence relevant to each charge separately and distinctly." 118 U.S. App. D.C. at 17-18, 331 F. 2d at 91-92. Apparently mindful of this exception, the

²⁹ The trial court, unable to dispel this inevitable prejudice by argument based on reason, tried to make it disappear by waving a rhetorical wand. Literally leaping from its finding that the two sub-joinders were non-prejudicial, the court concluded:

"Thus, it is clear that whatever cumulative effect, if any, the presentation of proof in this case might have would not be eliminated by severing the various counts." 262 F.Supp. at 687.

trial court gave reason to believe that it intended to give appropriate instructions to the jury to prevent confusion and the overlapping of prejudice from one count to another. 262 F. Supp. at 687. What this apparent promise was intended to convey is difficult to discern, in view of the court's later revelation that its policy in instructing juries was not to discuss evidence. *E.g.*, JA 1217-19. In any event, the court's instructions to the jury contained not a single word to help the jury compartmentalize the evidence.³⁰

The *Quinn* court found prejudice because "the introduction of evidence extended over a five-day period, was complex and confusing, and . . . the most optimistic seer would hesitate to endanger his reputation by claiming that the jury could separate the proof relevant to the different counts." 365 F. 2d at 265. The court also pointed out in *Quinn* that the argument of the severance motion took fifty pages of transcript and showed that the case was legally and factually confusing, that the judge had difficulty grasping the government's conception of the charges and government counsel could not easily explain their own position. *Ibid.* In the case at bar the introduction of evidence took twelve days, not five; the argument of the severance motions, apart from the numerous discussions in chambers, was at least as long as in *Quinn*, M.T. 713-66; even when all the evidence was in, let alone when the motion was argued, the court still had trouble understanding the gov-

³⁰ A similar unkept "promise" by the trial court was noted as part of the basis for finding prejudice in *Quinn v. United States*, 365 F.2d 256, 266 (7th Cir. 1966). Equally applicable here is the observation in *Quinn*:

"Even if such an instruction had been given, we think that with the mass of testimony which the government introduced it would have been next to impossible for the jury to have differentiated between the proof as it pertained to the different counts. The government in the beginning when it opposed the motion for severance should have anticipated the prejudicial situation in which defendant would be placed." *Ibid.*

government's position as to part of its case,³¹ and so did the government, T. 3060-69. Compared to the legal and factual complexity and confusion of this case, *Quinn* was a model of simplicity and clarity.³²

³¹ The Court's inability to understand Count 9 makes it safe to say that the jury must necessarily have been in the dark as to that count. The situation as to Count 8 was even worse. As we argue at length in VII, *infra*, the trial judge omitted to give the jury any guidance on the legal theories which lay at the heart of the dispute over Count 8. Given this clear error, which we urged below as an independent ground for reversal, the danger was clear and present that the jury might confuse with Count 8 any evidence properly pertinent only to other counts, if it so much as smelled of "Bromley" or "taxes" or anything else they might imagine to be involved in Count 8. In the language of *Quinn*, "the most optimistic seer would hesitate to endanger his reputation by claiming that the jury could separate the proof relevant to the different counts." 365 F.2d at 265.

³² For example, included in the evidence relating to Count 1's charge of attempted 1961 tax evasion was testimony about a deductible casualty loss to which appellant was entitled and only part of which he had claimed. The loss arose from 1962 storm damage and would not have been deductible on a 1961 return but for special legislation. 26 U.S.C. § 165(h), P.L. 87-426. There was testimony placing that 1962 damage at about \$100,000, which happens to approximate the amount of the allegedly stolen money involved in Counts 3 through 7, a substantial part of which is alleged in Count 2 to have been unreported. As still another 1962 involvement, the Count 9 conspiracy, though directed at later years, was gratuitously alleged to have commenced in 1962 and the indictment containing that allegation was sent into the jury room. The trial court said nothing to the jury to help them understand that the claimed storm damage, although happening in 1962, was to be considered only in connection with the 1961 income tax; that, although the amount of the damage happened to coincide with the amount claimed by the government to have been stolen in 1962 and largely unreported in that year's tax return, the evidence was not to be considered in connection with Counts 2 through 7; and that appellant's claim of a tax benefit from the 1962 storm was not to be considered as part of the Count 9 conspiracy, allegedly commenced that same year, to defraud the United States.

Additional evidence tending to direct Count 9 (and Count 8, as well) back into 1962 and, therefore, inevitably producing confusion, was the gratuitous eliciting from Bromley of testimony that appellant, with regard to a transaction involved in Counts 8 and 9, had intimated that he had received the money as "campaign contributions." JA 717-18. This, without any further elucidation in the evidence and without any orientation in the instructions, could very well have caused the jury to blend together the fees appellant received from his clients in 1963 and 1964 (Counts 8 and 9) with the allegedly stolen "campaign contributions from the savings and loan representatives in 1962 (Counts 3 through 7).

2. The Prejudicial Effect of Embarrassing and Confounding Appellant in His Defense.

The factual proposition at the core of Counts 8 and 9 was that appellant, with regard to monies receivable from certain clients, had arranged for checks to be made out in the name of Bromley and for Bromley to give him the proceeds.

Appellant contended that his reliance on advice of counsel was a complete legal defense to Counts 8 and 9. That defense required no testimony by appellant. Moreover, were he to testify as to Counts 8 and 9, he might risk incriminating himself under the conflict of interest statutes. He wanted, therefore, to defend Counts 8 and 9 without himself taking the stand. Defense of the other counts of the indictment, however, required him to testify in his own behalf.

When the severance motion was being argued, the potential prejudice of the nine-count joinder was articulated only in general and hypothetical terms. M.T. 724 *et seq.* The court recognized that appellant had raised a "serious question", but said that, "at this stage of the proceedings", appellant could not be expected to make an irrevocable election. The Rule 14 aspect of the severance motion was, therefore, denied "without prejudice to its renewal at such time as the defendant makes a decision as to whether he will testify or not." 262 F. Supp. at 687-88.

When, after denial of the motion, but still before trial, appellant made and announced³³ his decision, the government continued to resist severance and the court withheld decision on the issue. At the conclusion of the government's case, decision could no longer be deferred. Renewing the motion, counsel called the court's attention to the unsuccessful pretrial severance efforts and argued that severance alone would no longer protect appellant. Since the govern-

³³ *Supra* note 21.

ment had already put in its proof on all nine counts, severing some of them at that juncture of the case would leave appellant prejudiced as to those counts going to the jury. It would be necessary under the circumstances to grant a mistrial and start anew, before a different jury, a trial free of prejudicial joinder. JA 859-63 The court denied the renewed severance motion "in view of that."³⁴ JA 862.

In *Cross v. United States*, 118 U.S. App. D.C. 324, 326, 335 F. 2d 987, 989 (1964), this Court said:

"Prejudice may develop when an accused wishes to testify on one but not the other of two joined offenses which are clearly distinct in time, place and evidence. His decision whether to testify will reflect a balancing of several factors with respect to each count: the evidence against him, the availability of defense evidence other than his testimony, the plausibility and substantiality of his testimony, the possible effects of demeanor, impeachment, and cross-examination. But if the two charges are joined for trial, it is not possible for him to weigh these factors separately as to each count. If he testifies on one count, he runs the risk that any adverse effects will influence the jury's consideration of the other count. Thus he bears the risk on both counts, although he may benefit on only one. Moreover, a defendant's silence on one count would be damaging in the face of his express denial of the other. Thus he may be coerced into testifying on the count upon which he wished to remain silent. It is not necessary to decide whether this invades his constitutional right to remain silent, since we think it constitutes prejudice within the meaning of Rule 14."

It would seem, then, that a timely and a bona fide election by the accused to testify as to some counts and not as to others requires a Rule 14 severance.

³⁴ Rule 14's authorization to the court not only to sever counts, but also to "provide whatever other relief justice requires," includes, of course, ordering "another trial altogether." *United States v. Goss*, 329 F.2d 180, 184 (4th Cir. 1964).

In *Cross*, the Court treated the motion as timely even though "the appellants did not specify at trial the counts upon which they wished to remain silent and why", because the trial court "seem[ed] to have precluded" such specification. *Id.* at 326-27, 335 F. 2d at 989-90. In the instant case, appellant, well before the commencement of the trial, offered the court a complete specification of his position, but the court was not interested in hearing it.³⁵ We submit that, under *Cross*, even without a demonstration from the trial record of the specific prejudice accruing from the joinder, the denial of appellant's severance motion was error.

Were it necessary to show that specific prejudice actually occurred at the trial, the record shows it. The very thing appellant feared might happen, were he required to testify on Counts 8 and 9, actually did happen. Having to explain why he had employed Bromley as an intermediary in collecting his fees, he testified that the then Majority Leader of the Senate had objected to his carrying on a private practice while occupying the office of Secretary of the Majority. It was, in part, to hide the fact that he was continuing to take private retainers, despite the Majority Leader's instructions, that appellant invoiced his clients in Bromley's name. This testimony concerning his evasion of the Majority Leader's instructions, while possibly an incriminatory link in the chain of a conflict of interest case, was exculpatory of the charges in Counts 8 and 9. In the eyes of the jury, however, testimony about deceiving the then Senator Lyndon Johnson was an extremely damaging admission, damaging, moreover, on all counts, not only 8 and 9. The prosecutor, for his part, made certain that maximum prejudice would accrue. In his summation, referring to appellant's testimony that the Majority Leader had told him "not to engage in any outside activities" the prosecutor declared:

"Well we know of probably 30 outside activities that he added and I submit to you if he will be deceitful to

³⁵ *Supra* note 21.

the Majority Leader, he will be deceitful to you." T. 3189.

It is difficult to imagine more damaging evidence than this testimony which appellant was compelled to give. That he gave it under compulsion cannot be doubted, for his defense to Counts 1 through 7 required that he testify and, as the trial court itself observed:

"Since any decision by the defendant to testify will constitute a waiver of his privilege against self-incrimination, in a joint trial the defendant will be unable to limit his testimony." 262 F. Supp. at 687.

To that observation, the court added:

"However, if individual trials were held as to the separate offenses, defendant's testimony at one trial would not constitute a waiver of his privilege to remain silent at a separate trial." *Ibid.*

The latter option is what appellant needed, sought and was entitled to. By denying it to him, the court committed prejudicial error.

3. The Designed Prejudice of Multiplicity.

In *Drew*, after setting forth the specific types of prejudice which the accused may suffer from joinder, this Court said:

"A less tangible, but perhaps equally persuasive, element of prejudice may reside in a latent feeling of hostility engendered by the charging of several crimes as distinct from only one." 118 U.S. App. D.C. at 14, 331 F. 2d at 88.

Seldom, if ever, has this element of prejudice been as forcefully exemplified as here. This prosecution did not ensue from an investigation of any alleged offense or offenses. It was the culmination of a relentless inquest on a man. His name became a household word through a

long legislative investigation and endless publicity, not linking appellant to alleged crimes, but linking alleged crimes to appellant. He, not a crime, was the subject of inquiry. The grand jury which presented this indictment spent a year and a half investigating his entire career. Unable to find evidence to support a single clear charge against appellant, the prosecutor obtained from the grand jury an amalgamation of the assorted dredgings of its protracted and directionless inquiry. That any of the counts of the indictment, standing alone, would have any prospect of success must have been doubted even by the prosecutor. To convict appellant of any count, the prosecutor needed the "latent feeling of hostility" referred to in *Drew*. So inevitable was the prejudicial effect of this multiplicity that the jury returned more guilty verdicts than the trial court authorized. See VI, *infra*.

We submit that the principle expressed in *Drew*, if it was to be served more than by lip, required a severance in the case at bar.

II. APPELLANT WAS CONVICTED BY AN ILLEGALLY IMPANELED JURY

Departing from normal jury selection procedures, the court adopted a course which produced a jury of volunteers, consisting of eleven government employees and one government pensioner, with a reserve lieutenant of the Metropolitan Police Department as its foreman, selected from a panel which, over defense objection, was informed in advance that the jury was to be sequestered for the duration of the trial and that the trial might take as long as two or two and one-half months. JA 390-91.

The process commenced normally enough with the delivery to defense counsel of the January jury list. While counsel were studying that list and conducting the usual investigations designed to aid in voir dire and in the exercise of challenges, the court, without notice to the defense,

was arranging for a new list. The new names, ordered by the court on its own initiative ostensibly because the number of names on the regular list would be inadequate, JA 389-90, 379-81, were drawn by the Jury Commission on December 30, 1966, and the prospective jurors appeared before Judge Gasch on January 4, 1967, for examination. From the statutory generalities relating to disqualification and exemption from jury service, the questioning quickly descended to specific inquiries relating to individual attitudes toward Baker and his alleged crimes. While the judge began by informing the array they had been summoned for general January duty, he soon revealed, by his questions to individual members, that it was the Baker trial for which they had been called. The extraordinary colloquy on this subject is set forth in Appendix C hereto. See also JA 346-77.

The defense knew nothing of this proceeding until the judge mentioned it in a chambers conference later that day. Still later that day, through a chance remark by the judge, counsel learned that the special panel had been specifically interrogated about this case. Even then, however, counsel were not informed of the nature of the proceeding, for, when they inquired whether the new panel had been called specially for this case, the judge replied: "They weren't called specifically for this case. No." P.C. (2:50 p.m.), 1/4/67, 15 (impounded). From the judge's statements to the prospective jurors that their services would not be required until January 9, the day when the Baker trial was to open, and from the fact that those not picked for the Baker trial were excused from all service, there can be little doubt that they had been summoned for this case and this case only. JA 379-81; see also Appendix C.

Any doubt that Judge Gasch was conducting a Baker voir dire, rather than an examination of general jury qualifications, was put to rest by his action in excusing jurors for what he conceived to be partiality about the Baker case. Appendix C.

When the new array reported on January 9 for the opening of the trial, it became perfectly clear not only that they had been summoned for this trial, but also that they were the only prospective jurors designated for this trial. The members of the regular January panel had been earmarked for the balance of the docket and were not in the courtroom. JA 597-99.

The array with which appellant was thus confronted was illegal in two respects: it had already been subjected to a partial voir dire in the absence of appellant and his counsel, in violation of F.R. Crim. P. 43, and of the Fifth and Sixth Amendments;³⁶ and it had been summoned in violation of D.C. Code § 11-2306.

Because the court had ignored the § 11-2306 requirement for summoning jurors at least ten days before the term, defense counsel were deprived of the usual opportunity to acquire information about prospective jurors. All they could tell was that about two-thirds of them were government employees. When the court commenced proceedings on January 9 by announcing that it would sequester the jury for the duration of the trial, estimated to be about 10 weeks, a long line of petitioners for excuse queued up in the courtroom. That the economic hardship of long jury service is much greater upon privately-employed jurors than upon government employees is common knowledge.³⁷ The expected happened: after the excuses and the exercise of challenges for cause, the panel was 90 per cent government-employed. However the defense used its peremptory challenges, it could not prevent the selection of a

³⁶ Based upon what they had learned in the chambers conferences the afternoon of January 4, appellant's counsel immediately began preparing papers to attack the array. On Saturday, January 7, they informed the court that their motion would be filed as a preliminary matter on January 9. The motion was filed at that time and was denied. The defense contentions were renewed by motion for a new trial. This motion as well was denied.

³⁷ See dissent of Mr. Justice Jackson in *Frazier v. United States*, 335 U.S. 497, 516-17 (1948).

jury all twelve of whose members drew their income from the government. This imbalance resulted, in no small measure, from the judge's determination, after announcing the sequestration order, that he would excuse "those who asked to be excused", even though their reasons were "less than absolutely compelling". JA 414, 418-19.

One member of the jury, John Buchanan, was also a reserve lieutenant in the Metropolitan Police Department. This latter information was withheld when, on voir dire, the panel was queried as to employment not only by the United States, but by the District of Columbia. T. 163. It was also withheld during the January 4 proceeding when the array was asked, "Is anyone connected with the Police Department . . . of the District of Columbia?" Nor did Buchanan respond when the array was asked, "Is anyone of you a special police officer?" JA 348. In ruling on appellant's post-trial motions, the court ignored the question whether the defense might have learned of Buchanan's police connection in time for voir dire, had the array been normally drawn at least ten days before January.

A. The Illegal Voir Dire

On January 4, 1967, Judge Gasch, in the absence of defendant and his counsel, examined the newly-summoned prospective jurors, informed at least some of them that they had been summoned for the Baker case, questioned them about any bias or preconceptions they might have about the case and ended by excusing those he found to be possibly biased. For example, he excused one prospective juror because, as a newspaper employee, she had worked on the coverage of the Baker investigation. Another was excused because he knew two of the defense counsel and thought they would object to him. Others, who professed to know "not too much" about the Baker case were allowed to stay on. Appendix C.

We make no contention that defendants are entitled to participate in the examination, by the Chief Judge or his

designate, of the prospective jurors normally summoned under D.C. Code § 11-2301 for a term of jury duty, for the purpose of determining general qualifications for service or exemptions and excuses from service. The number of lawyers and litigants who would have to be present would make such a practice unmanageable. We do contend, however, that when, as here, a special panel has been summoned for a specific case and the examination of its members descends from statutory generality to the particularities of the jurors' suitability for the specific case, the defendant has a right to be present, to be assisted by counsel and to have the proceeding fully public rather than conducted at the bench.

Consonant with the basic principle that, "after indictment found, nothing shall be done in the absence of the prisoner", *Lewis v. United States*, 146 U.S. 370, 372 (1892), F.R. Crim. P. 43 provides:

"The defendant shall be present . . . at every stage of the trial including the impaneling of the jury"

"Impaneling" is defined as "all the steps of ascertaining who shall be the proper jurors to sit in the trial of a particular case up to the final formation." Black, *Law Dictionary*, 886 (4th ed. 1951). "Trial", in this context, "commences at least from the time when the work of impaneling the jury begins" and includes "any steps . . . which involve [the defendant's] substantial rights." *Hopt v. Territory of Utah*, 110 U.S. 574, 578 (1884). See also *United States v. Brest*, 23 F.R.D. 103 (W.D. Pa. 1958), setting aside a conviction simply because the record did not affirmatively show the defendant's presence when the prospective jurors were examined as to their qualifications for his case.

As was said in *Gideon v. United States*, 52 F. 2d 427, 429 (8th Cir. 1931):

"The qualifications of a juror should be ascertained by questioning in open court and in the presence of the parties interested and while the juror is under oath."

The privilege of presence must be construed to extend to a proceeding which "concerned specifically [the defendant's] case," i.e., which "related to the qualifications of the jurors for the specific criminal case and not to their general qualifications." *Welch v. Holman*, 246 F. Supp. 971, 974 (M.D. Ala. 1965), *aff'd*, 363 F. 2d 36 (5th Cir. 1966).³⁸

Since his counsel, as well as appellant himself, were excluded from the January 4 proceeding, the partial voir dire conducted by the court violated not only his right, under Rule 43 and the due process clause of the Fifth Amendment, to be present, but also his right under the Sixth Amendment to the assistance of counsel. As the court said in *Thomas v. Hunter*, 153 F. 2d 834, 839-40 (10th Cir. 1946), speaking of counsel's absence on the return of the jury's verdict:

"Assuming that a court can adequately represent the defendant at any step of a contested criminal trial, that is not a substitute for, nor can it be taken in satisfaction of, the constitutional requirement that one charged with crime is entitled to the benefit of counsel

³⁸ That the court, in examining and excusing prospective jurors, may have been undertaking to protect the defendant's interests does not alter the case. *Thomas v. Hunter*, 153 F.2d 834, 839-40 (10th Cir. 1946). *Cf. Dennis v. United States*, 384 U.S. 855, 875 (1966): "In our adversary system, it is enough for judges to judge. The determination of what may be useful to the defense can properly and effectively be made only by an advocate."

Nor is there substance to the government's argument below that defendant may not complain of the excusing of prospective jurors in his absence, because his right is one of rejection and not of selection. *See generally United States v. Marchant*, 25 U.S. (12 Wheat), 480 (1827) (per Story, J.). Though it may be that the defendant cannot assign as error the wrongful rejection of a juror, it does not follow that he has no right to be present when jurors are challenged. He is entitled to present to the court his reasons why a particular juror should not be excused. If it were not so, the government would have, in effect, unlimited peremptory challenges, restricted only by the judge's discretion.

who will devote his undivided energies solely and exclusively to the performance of these functions.”³⁹

For the foregoing reasons, the jury which convicted appellant should be held to have been unlawfully impaneled. The rights to appear and to defend, in person and with counsel, in a public courtroom are indissolubly linked one with another and are “scarcely less important than the right of trial itself.” *Diaz v. United States*, 223 U.S. 442, 455 (1912).

B. The Unlawful Summoning of the Special Jury Panel

The statute providing for the selection of jurors is clear as to how the selection shall be made: “At least ten days before the commencement of each term of the United States District Court for the District of Columbia, at which jury trials are to be had,” the jury commission is to draw a

³⁹ Moreover, since much of the colloquy reproduced in Appendix C took place at the bench, outside the hearing of press and spectators, the Sixth Amendment public trial guarantee was also violated. The constitutional requirement of a public trial extends to “that portion devoted to the selection of the jury.” *United States v. Sorrentino*, 175 F.2d 721, 722 (3d Cir. 1949); see also *United States v. White*, 237 F. Supp. 644, 649 (E.D. Va. 1964).

The public trial guarantee is of ancient lineage, see Smith, *De Republica Anglorum*, Bk. 2, ch. 15 (1583) (p. 79 of Alston ed. of 1906), but is justified by more than its antiquity. The prospective juror who must stand and answer in public is less likely to lie or be mistaken. Bentham, *Rationale of Judicial Evidence*, Bk. 2, ch. X, § 2 (1st ed. 1827). With notice of the proceedings brought to the attention of possible witnesses, mendacity and incorrectness will be subject to contemporary review. 6 Wigmore, *Evidence* § 1834 (3d ed. 1940). Appellant need not show that he was prejudiced by denial of a public trial. To require such a showing would “impair or destroy the safeguard.” *United States v. Kobli*, 172 F.2d 919, 921 (3d Cir. 1949). The prejudice is to the jury system itself. Since prospective jurors notoriously seek to avoid service, see Broeder, *The University of Chicago Jury Project*, 38 Neb. L. Rev. 744 (1959), a check upon the veracity of their answers is a highly important safeguard. To the extent that private excuse-taking permits jurors to evade service, the jury panel loses its representative character and becomes a group of volunteers.

venire for service on all cases at that term.⁴⁰ D.C. Code § 11-2306.

Summoning of the prospective jurors is covered by 28 U.S.C. § 1867; inability of a selected venireman to serve is covered by D.C. Code § 11-2307; absences or deficiencies in the panel are filled under the terms of D.C. Code § 11-2309; and summoning of talesmen is provided by 28 U.S.C. § 1866(a), carrying forward the writ *de talibus circumstantibus* procedure of the Act of September 24, 1789, 1 Stat. 73. Nowhere does this extensive and detailed scheme provide for selecting a special or additional venire for a specific case. Indeed, the provision in D.C. Code § 11-2306 for summoning a special *grand* jury is strong evidence that Congress intended that there be no special *petit* jury panels.

In summoning this venire, the trial judge purported to act under D.C. Code § 11-2309, which provides:

"When persons drawn as grand or petit jurors cannot be found, or prove to be incompetent, or are excused from service by the court for which their names are drawn, the jury commission, under the order of the court, shall draw from the box the names of other persons to take their places, and if, after the organization of the jury, vacancies appear therein, the commission shall fill them in like manner."

Careful analysis of this and related sections demonstrates that, far from authorizing the action here taken, is part of a statutory system designed to *prevent* such action.

Section 2309 provides only for summoning of additional jurors for service on *all* cases to be heard during a month. It cannot be used to justify calling additional jurors for

⁴⁰ Since District Court Rule 2 provides for continuous transaction of business, the practice has developed of drawing jurors for each month. This practice conforms to the statute, as the "terms" were formerly measured in months.

a particular case.⁴¹ It speaks of jurors who are unavailable for prescribed reasons. If there are vacancies, "the court" may order additional names drawn. "The court," in the context of § 2309, refers to the Chief Judge or a judge acting under his direction or under the direction of all judges of the District Court (or the Court of General Sessions, as the case may be).

The only statutory means for summoning additional jurors for a particular case, when "sufficient petit jurors are not available," is the provision of 28 U.S.C. § 1866(a) for summoning "talesmen from the bystanders."⁴²

In sum, D.C. Code § 11-2309, read with the other jury selection provisions and with District Court Rule 18, is part of a uniform procedure for summoning a single pool of jurors for service on all cases to be heard during a particular month. This reading of § 2309 provides important protections for a criminal defendant, for it ensures that jurors drawn for service are not told that they will be assigned to a particular case. Hence, the danger of such improper questioning of jurors as occurred in this

⁴¹ See also District Court Rule 18 which provides for a "single pool" of jurors, by inference reinforcing this view. Even assuming *arguendo* that the trial judge could *summon* additional jurors, he was without power to do other than assign them to the master jury pool.

⁴² Section 1866(b), provides for special venires as called for "by the law of the State." Prior to 1963, a special venire could be called under D.C. Code § 11-1413 (1961 ed., repealed). Section 1413, however, provided only for the summoning of bystanders to serve as additional jurors. Hence the "special venire" was in effect a talesman procedure. Prior to 1920, the provision which as of 1961 was styled D.C. Code § 1-1413 also permitted the judge in a criminal case to summon additional jurors by having additional names drawn from the jury box or jury wheel. This section was repealed in 1920, and, since then, the *only* means for getting more jurors for a particular case is to summon talesmen from bystanders. The repeal in 1920 of the authorization for individual district judges to summon additional jurors for a particular case by having names drawn from the box or wheel is strong evidence that the district judge did not have authority to do as he did here. See notes to D.C. Code § 11-1413, repealed, Volume I, D.C. Code Anno., 1961 ed.

case is minimized. Moreover, it will not be possible, as occurred here, for prospective jurors to be informed on January 4 that they have been called for a specific case to be tried five days later and then, their curiosity aroused, to be sent home, unadmonished not to read all they can find about the case.⁴³ Also, under a proper reading of the statutory scheme, the ten-day provision of § 2306⁴⁴ will ensure to the defense its pretrial opportunity to check the jury list as an aid to voir dire and challenges.

Because the court, in violation of the statutory scheme, convoked a special venire for this case, the jury impaneled from that venire was unlawfully impaneled and its verdict must be set aside, despite the court's statements that the venire was not intended as a special venire. What matters is not what the court *said*, but what it *did*.

C. The "Stacking" of the Jury With Government Employees

Aware that the usual District of Columbia jury contains a substantial number of government employees and that such a jury could be lethal in a case involving charges of multiple wrongdoing by a highly-placed government official, the defense moved to strike the names of government employees from the jury panel. The court denied the motion. The prejudicial effect of this ruling was tremendously enhanced when the court, over defense objection, announced that the jury would be sequestered. The result of these two actions, coupled with the court's policy of liberality in

⁴³ Even those members of the panel who were not informed by the trial judge or their fellow veniremen that they would be sitting in the Baker case were informed of it by the *Washington Star* when they left the courtroom on January 4. JA 378.

⁴⁴ The government argued below that the ten-day provision of § 2306 is "directory," rather than "mandatory." While in some jurisdictions jury selection statutes such as D.C. Code § 11-2306 have been held to be merely "directory," the District of Columbia rule is that violation of statutory jury selection provisions constitutes prejudicial error. *Clark v. United States*, 19 App.D.C. 295 (1903).

excusing jurors claiming hardship, was this jury of twelve persons drawing their income from the government.

Sequestration of the jury, especially when the jury is told the trial may take ten weeks, not only speeds the departure of privately employed individuals from the panel, but also exerts a coercive effect upon the jurors actually selected.⁴⁵

In objecting to sequestration, the defense referred the court to this Court's view in *Coppedge v. United States*, 106 U.S. App. D.C. 275, 278, 272 F. 2d 504, 507 (1959):

"Under normal conditions, juries are customarily permitted to separate, even over weekends, and, unless there be exceptional circumstances, they should be permitted to do so."

The "exceptional" feature of this case, by reason of which sequestration was ordered, was the likelihood of substantial coverage of the case by the news media. But that very circumstance was pointed to by this Court in *Coppedge* as *not* justifying sequestration. The proper procedure for protecting the accused against the effects of prejudicial trial publicity, even in a trial "of sensational interest," is to "call the attention of the jurors specifically to the possibility of such newspaper accounts and to admonish jurors not to read them." *Ibid.*

By combining with its announcement of the sequestration order a policy of excusing all "those who asked to be excused," JA 419, the court substantially denuded the panel of privately-employed members. Some were excused specifically on pleas of hardship arising from private employment. JA 394, 395, 397, 398-99, 419-20. Others pleaded personal hardship without referring specifically to their

⁴⁵ Indeed, at common law, enforced sequestration of the jury without "meat, drink, fire, or candle, till they are agreed," was the usual means of coercing the jury to bring in its verdict. 2 Hale, *Pleas of the Crown*, 296 (1st Amer. ed. 1847).

jobs. In former years, district judges in this jurisdiction were wont to excuse all jurors who wanted to be excused. After this easy-excuse policy had been attacked in *Frazier v. United States*, 335 U.S. 497 (1948), as tending to produce a government-employee jury,⁴⁶ the District Court ordered its discontinuance.⁴⁷ The revival of the policy⁴⁸ in a case where a government-employee jury would obviously be especially prejudicial, was inexcusable and grossly unjust.

The majority holding in *Frazier* that a government-employee jury is not *ipso facto* illegal must be read in the light of the Court's limitation: "Given of course a panel and jury *otherwise selected in accordance with law.*" 335 U.S. at 510 n. 18 (emphasis added). This jury, in view of all we have shown herein, can hardly find shelter under *Frazier* as thus limited.

Moreover, even the *Frazier* majority recognized that there may be circumstances invalidating a government-employee jury. It recognized the right to challenge the jurors for "actual bias," which it defined to include:

"not only prejudice in the subjective sense but also such as might be thought implicitly to arise 'in view of the nature or circumstances of his employment, or of the relation of the particular governmental activity to the matters involved in the prosecution, or otherwise.' " 335 U.S. at 510 n. 19, quoting *United States v. Wood*, 299 U.S. 123, 133 (1936).

⁴⁶ The majority in *Frazier* did not reach the issue, considering it without factual support in the record. 335 U.S. at 503. The four dissenters strongly condemned "amiable" excusing of prospective jurors as a policy which stacks the panel with government employees. *Id.* at 516-18.

⁴⁷ *Washington Post*, April 23, 1948, cited in Heller, *The Sixth Amendment* 165 n. 102 (1951).

⁴⁸ The discontinued practice had been to excuse all those desiring to be excused; as revived here, the practice was to require statement of a reason, but to accept reasons "less than absolutely compelling," R. 117, and in the end, to "excuse those who asked to be excused," "in view of those who are willing to serve." T. 123-24. This policy is flatly contradictory to *Thiel v. So. Pac. Ry. Co.*, 328 U.S. 217, 224 (1946).

The circumstances of this case gave cause for concern over the prejudicial effect of a government-employee jury. We submit that they clearly called for striking government employees from the panel. This Court, however, need not reach that question, for it is amply clear that, in the light of this announcement of sequestration and the free excuse policy, this government-employee jury was not "otherwise selected in accordance with law."

D. The Invalidity of the General Jury Selection Procedure

Even apart from the foregoing specific errors in the jury selection process, the impanelment of this jury was invalid, because the Jury Commission drew the panel by improper use of an improper questionnaire and acted, in fact, under an unconstitutional statutory provision. The questionnaire is printed at JA 383. The affidavit of Jury Commissioner Bliss relating to its use appears at JA 385.

1. The Illegal Questionnaire.

In addition to eliciting information on statutory qualifications, exemptions or grounds for excuse, the questionnaire required each prospective juror to give information not of statutory significance and posing great danger to the impartial administration of criminal justice. Some questions are merely irrelevant,⁴⁹ but others are affirmatively dangerous.

For example, Question 16's inquiry into the individual's arrest record can and, as we show below, does lead to elimination from the jury of persons who have had contact with the police but who have never suffered a conviction.

Question 27 ("Have you ever been treated for mental illness?") may be designed to elicit information about

⁴⁹ For example, Questions 4 through 8 go far beyond statutory occupational disqualifications, particularly in light of the specific occupational questions, Nos. 18 through 25.

mental capacity. D.C. Code §11-2301, however, turns eligibility upon "mental . . . infirmities," not upon the broader ground of treatment. The question is not only overbroad, it is irremediably vague. The myriad therapeutic situations in a mental-health-oriented society such as ours, combined with the flexible definition of "illness," make it doubly important that questions in this field be narrowed.⁵⁰ The sample questionnaire approved by the Judicial Conference Jury Committee contains no such question. 26 F.R.D. 409, 507-08 (1960) [hereinafter "Jury Report"].

Question 29, eliciting the juror's political and social views, is vague and overbroad, see *Aptheker v. Secretary of State*, 378 U.S. 500 (1964); *Cramp v. Board of Public Instr.* 368 U.S. 278 (1961), trespasses upon the privacy of prospective jurors, Jury Report, 26 F.R.D. at 436, and tends to deter scrupulous persons from returning the questionnaire at all, *Cramp*, 368 U.S. at 286, thereby narrowing the base for jury selection. Question 29 is especially odious in view of the high population of government employees in this district; and, in the case at bar, in view of the judge's adoption of a procedure which produced a solid government-employee jury. The use of "Big Brother" tactics in the very process of jury selection raises constitutional issues not tendered by the mere existence of a government loyalty-security program. Compare *Dennis v. United States*, 339 U.S. 162 (1950). It was an implicit premise in

⁵⁰ The question appears to reflect a fundamental misunderstanding of modern mental health facts and policies. One American in ten needs psychiatric treatment for mental illness ranging from mild to severe. At least fifty per cent of all medical and surgical cases treated by private doctors and hospitals have a mental illness complication. 300,000 children under 18 are treated each year in psychiatric clinics alone for non-severe mental disorders. National Association for Mental Health, *Facts About Mental Illness* (1966).

Question 27 sweeps the severe and mild, the cured and the incurable, the neurotic and the psychotic, all into one group. It nets a far, far broader group than would be ineligible for jury service, invades the privacy of prospective jurors, and arrogates to the commissioners a discretion which they do not by statute possess and are not qualified to exercise.

United States v. Wood, 299 U.S. 123 (1936), that the government not go out of its way to pry into prospective jurors' private lives and remind them of the ubiquity of government concern.

Questions 27 and 29 exemplify the type of interrogation condemned in *Gideon v. United States*, 52 F. 2d 427 (8th Cir. 1931), cited with approval in *Jury Report*, 26 F.R.D. at 437. The *Gideon* questionnaire asked the juror's religious affiliations and their views on prohibition. Said the Court:

"The sending out of the questionnaire . . . was without authority of law: . . . the questions asked had, with one exception, nothing to do with the qualifications of a juror. . . . The effect of the questionnaire upon the jurors must have been baneful, they must have been led to believe that the government had some purpose in asking questions about their beliefs, and was keeping a record of the answers for future use; they doubtless were led to believe also that, in the minds of the government officials, at least, their usefulness as jurors was in some way affected by the beliefs about which the inquiry was made; and it is not impossible that they were led to think that the government intended to influence them in their beliefs. . . . We cannot escape the conviction that the sending of the questionnaire under the guise of governmental authority was . . . reprehensible." 52 F. 2d at 429.

The court reversed the conviction, without requiring any showing of prejudice from the practice. Interference with the sanctity of the jury system, even through the subtle technique of interrogating as to political beliefs and private conduct, is in itself destructive of the constitutional safeguard provided by "an impartial jury."

The mere use of this jury questionnaire, therefore, even apart from the manner in which it was used, requires reversal of this conviction.⁵¹

⁵¹ The use of a questionnaire containing improper questions, like the use of different-colored tickets for white and Negro veniremen in *Avery v. Georgia*, 345 U.S. 559 (1953), raises a *prima facie* case of impropriety.

2. The Improper Use of the Questionnaire.

The questionnaire, as the Bliss affidavit shows, is used to exclude many prospective jurors. In fiscal 1965, for example, the Jury Commission found only 7,821 out of 16,514 prospective jurors to be "qualified," on the basis of answers to the questionnaire and personal interview.⁵² The Commission's disqualification of more than half of those answering the questionnaire demonstrates *per se* a misuse of the questionnaire; it is simply not credible that so high a proportion of the population could not meet the simple residency, literacy, criminal conviction, and physical and mental competency standards of D.C. Code § 11-2301.

We need not, however, rely upon mere inference. The Bliss affidavit amply shows the manner and direction of the Commission's malfeasance. The Commission eliminates from consideration those who, in its view, possess too little formal education to render "efficient and intelligent jury service." D.C. Code § 11-2301 requires only that prospective jurors be able to read, write, speak and understand the English language. By some formula devised by the Commission, formal education and employment record are combined and a subjective judgment made as to each applicant.⁵³ The reading and writing standard of D.C. Code

⁵² Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 89th Cong., 2d Sess., on S. 3296 and other bills, Pt. II, pp. 1242-52. The government, misconceiving appellant's point, argued below that, absent some showing that an identifiable class had been excluded, a challenge to the jury system must fail. The Jury Commission's obligation is not, however, limited to obeying the command: "Thou shalt not discriminate against an identifiable class or group." It must not violate the statutes, D.C. Code § 11-2301, *et seq.*, or act arbitrarily and capriciously in setting standards for jury selection within the ambit of its discretion under the statutes. *Rabinowitz v. United States*, 366 F. 2d 34, 53, 55 (5th Cir. 1966). It has an affirmative duty to secure a cross-section. *Ibid.*

⁵³ According to Bliss, persons in *exempt* occupations are *excluded* from jury service. Exemptions are set forth in D.C. Code § 11-2302. The former section, D.C. Code § 11-1420 (1961), had provided that persons in exempt

§ 11-2301(a) is at least amenable to objective measurement; not so the Commissioners' own vague and uncertain formula.

Similarly, although the statute requires only that a juror not have been convicted of a felony, the Commission uses Question 16 to determine the "existence and nature of past arrests of the prospective juror." Arrests are, of course, not necessarily related to the statutory standard of felony conviction, nor even to misbehavior.⁵⁴ The government sought to justify Question 16 as related to the selection of jurors who are "upright" within the meaning of D.C. Code § 11-2305. But how can any prospective juror defend himself against the charge that he is not "upright," or that his arrests are "too frequent?" There is simply no ascertainable standard for testing a particular exclusion. The "uprightness" standard is much like the "misconduct" standard struck down in *Giaccio v. Pennsylvania*, 382 U.S. 399, 403-04 (1966). Moreover, in view of the higher incidence of police interference with Negroes than with white persons,⁵⁵ the Commission's consideration of arrest records may produce invidious discrimination.

Question 27 is used to call in for interviews those persons who admit having been "treated for mental illness."

occupations "shall not be placed on jury lists." But that provision was eliminated in 1963. Thus, the Commission has ignored a plain change in the statutory language. By automatic *exclusion* of those made merely *exempt*, the Commission ignores the well-settled principle that "exemption is a personal matter which can be waived." *United States v. Golden*, 235 F. Supp. 1020 (D. Mass. 1964).

⁵⁴ See, e.g., opinion of Bazelon, J., in *Trilling v. United States*, 104 U.S. App. D.C. 159, 172 n. 11, 260 F. 2d 677, 690 n. 11 (1958).

⁵⁵ According to a report in the *Washington Post*, October 10, 1966, p. A 4, Cols. 3-4, 34 per cent of Washington's Negroes have been stopped by police; 23 per cent have been arrested. The comparable figures for Washington whites are 16 percent and 7 per cent respectively.

The Commission then decides which to accept and which to reject. Thus the Commission abuses Question 27 in precisely the way we submitted at note 50, *supra*, that it could be abused.

As for the political attitude question, 29, the Bliss affidavit says the Commission has never excluded any person for answering it affirmatively, but it does call such persons in for interviews. The mere asking of such questions is, as we demonstrate at II, D, 1, objectionable. When coupled with the interview technique, the entire practice is redolent of the police state⁵⁶ and even as thus limitedly used, invalidated this jury.⁵⁷

The government sought to justify the Commission's use of the questionnaire under the D.C. Code § 11-2305 provision for selecting "intelligent and upright" jurors. It argues, in effect, that the general language of § 2305 controls § 2301's specific enumeration of the qualifications for jury service and permits establishment of different and higher qualifications concerning involvement with the law, education, and mental health, etc., than those specified in § 2301. This contention violates the settled federal rule.⁵⁸ Sound reasons of policy, as well, dictate that the Commis-

⁵⁶ Views "opposed to the form of government established by the United States Constitution" are not confined to radical Marxists, nor to John Birch Society members who believe that the Supreme Court should be supplanted as a court of last resort, nor even to FBI agents who make it their business to trespass upon the Fourth Amendment. Few thoughtful citizens do not entertain some view that our form of government could be altered in some particular.

⁵⁷ Compare *Schowgurow v. State*, 240 Md. 121, 213 A.2d 475 (1965), reversing a murder conviction because a religious test oath was administered to jurors, even though it did not appear that any juror had ever been excluded on the basis of the oath.

⁵⁸ "However inclusive may be the general language of a statute, it 'will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which otherwise might be controlling.'" *Fourco Glass Co. v. Transmirra Prod. Corp.*, 353 U.S. 222, 228-29 (1957).

sion not have the discretion which the government would give it. Our law distrusts wholesale delegation of power, particularly to bodies whose functions are largely hidden from speed and effective contemporary review. See *Rabinowitz v. United States*, 366 F. 2d 34, 54 (5th Cir. 1966). To sustain the unconfined and vagrant power which the Commissioners claim would mock the teaching of such cases as *Cantwell v. Connecticut*, 310 U.S. 296 (1940), which struck down a commissioner's discretion to meddle with First Amendment rights. No less mandatory are those provisions of the Sixth Amendment which would be violated by the government's interpretation of § 11-2305. See *Glasser v. United States*, 315 U.S. 60, 85-86 (1942). In *Rabinowitz v. United States*, *supra*, the Fifth Circuit disapproved of vesting power in jury selection officials, rather than in the Congress or the District court acting under 28 U.S.C. § 1863(b), to exclude persons thought "unfit." The Court said, 366 F. 2d at 54:

"Section 1863(d) allows the district judge to exclude or excuse a group after 'a finding.' Such a procedure insures that blanket exclusions or excuses will be open and known, thus subjecting them to possible appropriate review."⁵⁹

Thus the Commission, far from having statutory warrant for its scheme of classifications, contravenes the statutory jury selection provisions. Failure to honor statutory commands relating to jury selection requires reversal of a conviction by an illegally selected jury. *Cf. Clark v. United States*, 19 App. D.C. 295 (1903).

⁵⁹ See also *Gideon v. United States*, 52 F. 2d at 429.

3. The Unconstitutionality of the D.C. Code § 11-2301(b) Exemption of Women From Jury Service.

This jury was selected under the provisions of D.C. Code § 11-2301(b) that:

“An otherwise qualified person is not disqualified from jury service by reason of sex, but a woman may not be compelled so to serve.”

This section is unconstitutional under the Fifth and Sixth Amendments, because it arbitrarily and capriciously discriminates between men and women and it distorts the jury system's representative character.

What we have said of the delegation of power to jury commissioners and of the need to avoid even the slightest distortion of the selection process applies *a fortiori* to a system whereby women jurors are in effect constituted an *ad hoc* jury commission and permitted to operate without any guidelines whatever.⁶⁰

This broad exemption of women, moreover, is based on no rational classification. Not just those women with children, nor those with jobs which they cannot leave, but all women who wish to be excused have to indicate this wish to the Commission or to the Court. *See generally* Tussman & tenBroek, *The Equal Protection of the Laws*, 37 Calif. L. Rev. 341 (1949).

The Sixth Amendment jury trial guarantee must be construed in accordance with the basic “concepts of a democratic society,” unfettered by “limitations . . . inherent in the historical common law concept of the jury.” *Glasser v. United States*, 315 U.S. 60, 85 (1942). Among the “concepts of a democratic society” in modern America is that

⁶⁰ This is especially true when the arduous labor of a big case may be evaded by the simple expedient of deciding to be excused. More broadly, D.C. Code § 11-2301(b) enables women who are not government employees to avoid financial hardship by merely electing not to serve, thus further distorting the jury selection system as a whole. *See Thiel v. So. Pac. Ry. Co.*, 328 U.S. at 224.

women are entitled to full participation in the benefits and obligations of citizens in an organized government. The "exemption" for women on federal juries is a badge of "second class citizenship" which many responsible citizens have at last come to condemn as fully as they would an exemption for Negroes.⁶¹ The President's Commission on the Status of Women, for example, has recommended complete equality of the sexes in jury service. *American Women: The Report of the President's Commission on the Status of Women*, 67 (Mead & Kaplan eds. 1965). Our "basic concepts of a democratic society" have now reached that stage of development which condemns, as a Sixth Amendment matter, discrimination against women in jury selection.⁶²

4. The Timeliness of the Motion.

The court below overruled appellant's challenge of the jury selection system as untimely under the rule of *United States v. Hoffa*, 235 F. Supp. 611 (E.D. Tenn. 1964). We submit that the court erred.

Traditionally, of course, the challenge is made prior to entering upon voir dire and at the time the defendant is presented with the panel. 31 Am. Jur., "Jury," §§ 109-10. The timeliness of a challenge made before or at the time the panel is presented to the defendant is attested by dicta in *United States v. Meyer*, 81 U.S. App. D.C. 371, 160 F.2d 222 (1946), *cert. denied*, 331 U.S. 822 (1947). The statement as to timeliness in *Frazier v. United States*, 335 U.S. 497 (1948), is not applicable here, for the *Frazier* challenge was not made until the defense was a half-day into the voir dire.

⁶¹ See generally Murray & Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 Geo. Wash. L. Rev. 232 (1965).

⁶² See generally Kenyon & Murray, *The Case for Equality in State Jury Service*, mimeo., prepared for the American Civil Liberties Union, 1966 (collecting many authorities).

It may be doubted whether a challenge to the panel would present a justiciable issue if made before the panel was actually drawn. *See generally United Public Workers v. Mitchell*, 330 U.S. 75 (1947). The important constitutional and statutory issues tendered in appellant's motion were not subject to decision in the abstract. Appellant might perhaps have assumed, but could not know, how the jury commission would perform its task six months after his pretrial motions were to be filed. The law may require the accused to be vigilant; it may not demand that he be prescient.

Moreover, *Hoffa* is readily distinguishable on its facts. Here, the jury panel was drawn on December 30, 1967, and returned into court on January 4, 1967.⁶³ Appellant's counsel were not present at the drawing, nor at the proceedings on January 4. In *Hoffa*, counsel was present at the drawing of additional names. Counsel in the instant case first heard of the court's action in drawing additional names in the afternoon of January 4. An investigation disclosed not only the events of January 4, complained of above, but also the presence of the illegal questionnaire. Counsel promptly called the trial judge on Saturday, January 7, 1967. The judge spent the weekend reviewing the authorities on jury selection. JA 388-90. Thus, while the written motion was filed just before the voir dire, the court was apprised earlier that the motion would be filed and had already decided the questions by Monday morning, January 9, based on its own research. JA 90.

Under these circumstances, it is difficult to see how a claim of untimeliness can be made.

⁶³ Even the regular January panel was not drawn until December 19, 1966.

III. THE CONVICTION MUST BE REVERSED BECAUSE OF THE GOVERNMENT'S ADMITTEDLY ILLEGAL ELECTRONIC EAVESDROPPING ACTIVITIES AND THE DENIAL OF AN ADEQUATE HEARING ON APPELLANT'S MOTION TO SUPPRESS THE EVIDENCE AND DISMISS THE INDICTMENT

Alleging that the government had illegally eavesdropped on his conversations in certain named places as well as others unknown, appellant moved for suppression of the evidence derived, directly or indirectly, from the illegal eavesdropping and dismissal of the indictment procured through such evidence. Affid. of Taft in support of Motion to Suppress, JA 36.

The government confessed that the FBI, in violation of appellant's Fourth Amendment rights, had eavesdropped on some of his conversations in the course of electronic surveillance in three specific places: (1) the office of Edward Levinson in the Fremont Hotel, Las Vegas, Nevada; (2) the business office of Benjamin Sigelbaum in Miami, Florida; and (3) the suite of Fred Black in the Carlton Hotel, Washington, D. C. JA 46-80; 262 F. Supp. at 663-64.⁶⁴ Beyond those specific "buggings" covered by its confession, the government denied that it had eavesdropped on any of appellant's conversations. JA 85-86. As to the confessed "buggings", the government declared them irrelevant to this prosecution. *Ibid.* It offered to reveal to appellant only those of the FBI's logs, transcripts and summaries covering his conversations. All other material resulting from the confessed "buggings" it offered only to the court for *in camera* inspection. JA 43-45.

Subsequently, the government gave the court transcripts of appellant's conversations overheard by the FBI through still a fourth electronic surveillance. The transcripts of those conversations were classified "Secret", because revelation of the situs of the "bug" would affect the national security. On the day of the hearing, those transcripts were

⁶⁴ Defendants Motion Exhibits are cited as DMX; Government Motion Exhibits as GMX.

shown to defense counsel, but counsel were ordered not to disclose the existence or contents of this material and the hearing they were offered on the matter was to be held in chambers. Order, 11/15/66; P.C., 1/10/67 (impounded). Since the defense insisted on a hearing free of such limitations, no hearing at all was held on the "secret" material. P.C. 11/18/66, 3-4 (impounded).

As for the fruits of the first three acknowledged "buggings", the court, over defense objection, sustained the government's contention that the relevance of the material should be determined through an *in camera* inspection by the court, JA 45, appellant thereafter to be shown only material relating to conversations in which he was found to have participated. So voluminous were the "bugging" materials that the court held it necessary, over defense objection, to delegate a portion of the inspection task to Judge Aubrey Robinson. JA 344-45; 262 F. Supp. at 666-67. Judge Robinson is not shown by the record to have been informed of any of the issues in the case as to which the determination of the relevance of the "bugging" materials was to be made. As a result of its *in camera* inspection, thus assisted by Judge Robinson, the court determined that there were no materials, other than those already picked out by the government, relating to appellant's conversations.

Armed with those selected materials and never having seen any of the rest of the material, appellant embarked on the hearing of his motion.

To test the hearsay assurance from FBI Director J. Edgar Hoover that all of the "relevant material" had been turned over for the *in camera* inspection,⁶⁵ appellant sub-

⁶⁵ The only record basis for a finding that all the "relevant material" had been submitted was an affidavit by Austin Mittler, one of the prosecutors, that he had submitted everything he had received from the FBI. Mr. Mittler, of course, could not know that the FBI had given him all the material. To fill that gap, therefore, he attached to his affidavit an unsigned and unsworn copy of a memorandum from Director Hoover to the Acting Attorney General. JA 87.

poenaed Mr. Hoover. JA 81. The court, however, quashed the subpoena and elected to take Hoover's assurance on faith. 262 F. Supp. at 667. Appellant was permitted to call as witnesses the FBI case agents, who had supervised the three confessed "buggings", and those agents who had monitored his conversations. Inquiry was limited, however, to "causal connection" between the specific illegally overheard conversations and the indictment. JA 115, 120. Whether the "bugging" was related to evidentiary facts which had not been spelled out in the indictment was deferred to the trial. 262 F. Supp. at 667.

Another limitation of the opportunity for full hearing was the court's willingness, over defense objection, to receive from the government, in lieu of cross-examinable testimony, the affidavits of agents actually present in the courtroom or within the government's easy call. JA 112-13, 119-20, 147-48, 167-68, 169. Still another limitation was that, despite defense demands for originals of the "bugging" materials for use during cross-examination, the government was permitted to supply typewritten copies, excising such information as the listing of the FBI field offices to which the material had been distributed. JA 145-46, 159, 160, 214.

The hearing developed that the Miami and Las Vegas "bugs" were connected, through leased telephone lines, to the respective FBI field offices, where they were monitored at least eighteen hours a day. JA 152, 190, 219, 252. For the Hotel Carlton "bug" in Washington, the FBI rented an adjoining room where it monitored 24 hours a day. JA 134, 281-82. In each case, the monitor made logs, i.e., contemporaneous notes of "pertinent" information heard over the device. Then a case agent would review the tapes of conversations on the logs and would prepare "verbatim", i.e., transcripts or summaries, which he would forward to FBI National Headquarters and to interested field offices. JA 140-41, 153-56, 223-25. The tapes would be

erased as soon as the case agent was through with them. JA 197-98. From the testimony of the agents, it appears that appellant, while not the primary target, was a secondary or associated target of the "bugging" operations. JA 136, 153-54, 221-22. In connection with the Las Vegas "bug", for example, two of the FBI monitors testified they had been instructed to be on the lookout for Baker as an associate of Edward Levinson. JA 178-82, 189-90. One of the case agents testified that he sent summaries concerning Baker to the Washington Field Office because of its interest in possible links between organized crime and national politics. JA 162-63.

The illegally seized conversations related primarily to appellant's business transactions with the three principal targets, Levinson, Sigelbaum and Black, and to the political business of his office as Secretary to the Senate Majority. JA 46-80. Appellant's testimony about the relevance of the "bugged" conversations was that, since the indictment swept in all his financial affairs over a 48-month period and the "bugging" materials were full of financial information about him for about half of that period, the two could not be said to be unrelated. JA 127; M.T. 92-95, 130-31, 133-35, 168-70B. The court found, however, that he had failed to show any specific relevance of any of those conversations to "matters contained in the indictment". Accordingly, while suppressing the "bugged" conversations in which appellant was a participant, the court otherwise denied the motion and placed no restriction on the government's proof. 262 F. Supp. at 666-67.

As to the question deferred to the trial, i.e., whether the "bugging" bore a causal relation to evidence relied on by the government, an occasion arose to consider it in the course of the government's cross-examination of appellant. On direct, appellant had testified, as to the \$17,000 received from John F. Marten on October 31, 1962 (the

subject of Counts 5 and 6), that he had delivered the envelope to Senator Kerr on Monday morning, November 5, 1962. In cross-examining appellant, the government elicited from him for the first time a statement that the weekend preceding November 5 had been consumed by a trip to Los Angeles on Friday, November 2, and a return to Washington, via New York, on Sunday, November 4. JA 990-91. It then confronted him with the fact that he had actually been at the Sands Hotel in Las Vegas that Friday through Sunday. JA 991-92. He agreed that, if the records so showed, it was probably true. JA 992-93. The prosecutor hammered on this change in testimony, to impress the jury that appellant had attempted to lie to cover the fact that, almost immediately after receiving the \$17,000 he was accused of stealing, he flew to the gambling center of the nation, a not unusual practice for those who convert other people's money. JA 994-99.⁶⁶

Not until the next day did defense counsel realize that the government had learned of appellant's presence at the Sands Hotel on November 2 to 4 from one of the bugged conversations between him and Levinson. On Thursday, November 1, 1962, the FBI had heard Levinson say to appellant by telephone:

"How are you Bobbie? . . . 8:45 tomorrow night— You're coming in on TWA. Okay Yeah, I know Benny is there. Right now I'll put you into the Sands. I'll

⁶⁶ The next day, on redirect examination, appellant testified that he had been confused. Airline records showed that the following weekend, November 9, 1962, he had in fact gone to Los Angeles on Friday, New York on Saturday, and back to Washington on Sunday. Out of the four years of activity involved in the indictment, he had confused this trip with the one of the week before to Las Vegas. JA 1091-94.

get ahold of Cliff—I'll call him right now . . . You're going to stay through Sunday? Okay, Buddy."⁶⁷

Appellant immediately moved to strike the Las Vegas cross-examination as based on the illegally seized conversation. JA 1056-57, 1087-89. And, arguing that this could not eliminate the prejudicial effect of the testimony, JA 1087-89, he also demanded a mistrial. JA 1138-39. The court, although conceding that the basis of the cross-examination was probably tainted, JA 1087, 1138-39, denied a mistrial; it did, however, order the jury to disregard the Las Vegas testimony, JA 1091, even though it recognized such instructions often have little effect. JA 1088-89.

Another example of the relation of a "bugged" conversation to the facts developed at the trial would require a forbidden reference to the contents of the "secret" material as to which no hearing was held. P.C., 1/20/67, 2-4; P.C., 1/23/67, 2-3, 8 (impounded).

All of the foregoing the court brushed aside in holding that the government's confessed illegal invasions of appellant's rights had nothing to do with this case. That ruling, for reasons we shall next discuss, was error vitiating the conviction.

⁶⁷ Appellant's attempts at the pretrial hearing to explore the connection of this very "bugged" conversation with the evidence to be produced at the trial had been frustrated by the court's restriction of the issue to casual connection with the indictment. In the examination of FBI agent Lee the following occurred:

"Q. Was there a time when you did in fact inform an attorney of the Department of Justice that you had monitored this particular conversation on November 1, 1962, which is reported in the first paragraph of Defendant's Exhibit No. 3?

"THE COURT: Mr. Taft, I think all this line of inquiry is immaterial to the causality issue. All that is before the Court on the motion to suppress.

"MR. TAFT: I think relevant to the whole inquiry is when the Department of Justice first became aware that this information had been obtained.

"THE COURT: The Court has ruled.

"MR. TAFT: And what uses they made of it."

JA 213.

A. The Hearing Was So Restricted as To Prevent Determination of the Full Extent of the Government's Surveillance Over Appellant.

The only assurance that the government has revealed all its illegal "bugging" of appellant is the unsigned, unsworn memorandum of FBI Director Hoover, attached to the affidavit of Mr. Mittler. JA 87. It was error for the court to quash appellant's subpoena to Mr. Hoover and to take the Hoover statement on faith. JA 81-84; 262 F. Supp. at 667.

Nardone v. United States, 308 U.S. 338 (1939), in placing on the accused the burden of proving in the first instance that he was subjected to illegal eavesdropping, acted on the not unreasonable presumption that law enforcement officers obey the law. As stated by the Court, to allow hearings on "tenuous claims" would show "undue solicitude for potential and, it is to be hoped, abnormal disobedience of the law by law officers." *Id.* at 342.

Recent revelations, however, have irreparably shattered the foundation of this presumption. By affidavit of counsel, appellant alleged that the FBI had been conducting a massive electronic surveillance program in Las Vegas, using illegally planted listening devices monitored at the local FBI headquarters through telephone lines leased in the name of a fictitious company. JA 36-42. Las Vegas telephone records, some of which are in evidence, reveal 25 such leased lines. *Ibid.* Mr. Mittler admitted that he had reviewed eight Las Vegas "bugging" files in preparation for the hearing below. JA 85-86. The Department has conceded similar illegal programs in many other major cities, including Miami, Washington, New York, Kansas City, Chicago, and Milwaukee.⁶⁸

⁶⁸ *Washington Evening Star*, December 11, 1966, p. A-1, A-8; *Markis v. United States*, Nos. 43 and 64, October Term 1966, Supreme Court of the United States; *Hoffa v. United States*, No. 1003, October Term 1966, Supreme Court of the United States; *Rainwater v. Florida*, No. 555, October Term 1966, Supreme Court of the United States; *O'Brien v. United States*, No. 823, October Term 1966, Supreme Court of the United States; *United States v. Balistrerie*, No. 65-CR-9, E.D. Wisc.

A clue to the origin of this course of FBI illegality is disclosed by the Solicitor General's admission to the Supreme Court in *Black v. United States*, 385 U.S. 26 (1966), that, sometime before 1963, Mr. Hoover was granted authority "under departmental practice" to approve the installation of illegal devices. The Solicitor General revealed, moreover, that Department attorneys had no knowledge of the devices and that, in the FBI reports on Black, "bugged" information had been carefully mixed with information from lawful sources, thereby concealing the use of "bugging".⁶⁹

The extent and method of concealment was revealed in a hearing on a motion to suppress, held in June 1967 before Judge Gasch, in *United States v. Nesline*, Cr. No. 535-65. Nesline had been "bugged" through a device in the home of one Rosenthal in Miami, Florida. The information was sent to the FBI Washington Field Office in a report designated "MM 972-C*". The asterisk indicated to the Washington office, which had a code book for report designations, that the source was an illegal listening device.⁷⁰ The Washington case agent then transmitted the "bugged" information to the Department of Justice attorneys, identifying its source with a new symbol, "WFT-170", the type of designation normally used for confidential informants and other legal sources. One of the government attorneys in *Nesline* testified that he understood from the "WFT" designation that the data had been supplied by a live informant.⁷¹

In addition to thus masking the nature of its reports on Nesline, the FBI was affirmatively disingenuous with the

⁶⁹ Supplemental Memorandum for the United States, *Black v. United States*, 385 U.S. 26 (1966).

⁷⁰ The record shows that the Levinson device was designated "LV-90-C*". DMX 3.

⁷¹ Transcript of Proceedings before Judge Oliver Gasch on June 29-30, 1967, in *United States v. Nesline*, Cr. No. 535-65, United States District Court for the District of Columbia, pp. 258-59, 203-05, 260-62.

government attorneys who sought to learn the truth. Nesline's motion had asked for all electronic recordings of his conversations. The prosecutor testified that the reason for his original denial that any existed was that the FBI case agent had so informed him. He had to reverse himself shortly before trial when the Miami device finally surfaced. The FBI case agent testified that he had refrained from disclosing the Miami "bugging", because he had assumed the prosecutor was asking about "bugging" directed against Nesline, not that which, although nominally directed against others, picked up Nesline's conversations.⁷²

With this history of deception, it is not surprising that, in November of 1966, the Solicitor General announced to the Supreme Court that an investigation was required to discover the extent of FBI wrongdoing:

"Recognizing its obligation not to use evidence obtained in violation of a defendant's protected rights in any criminal prosecution, the Department has initiated a program to discover prior instances in which this [illegal electronic surveillance] may have occurred The government will promptly notify the appropriate court when any material discovery is made."⁷³

However, as the Mittler affidavit shows, the Department attorneys do not actually investigate the FBI's conduct. JA 85-86. They simply ask Mr. Hoover if he will please enumerate the instances in which the victim in question has been "bugged" and turn over the relevant logs.

If the Department has been shocked into conducting even that much of an investigation, then it is indeed time, in cases where wrongdoing has been admitted, for the courts to investigate more thoroughly. The *Nardone* presumption of regularity is now in shambles, and, like any other re-

⁷² *Id.* at 212-13, 304-05.

⁷³ Supplemental Memorandum for the United States, *Schipani v. United States*, No. 504, October Term, 1966, Supreme Court of the United States, p. 5.

butted presumption, must give way to full right of inquiry.⁷⁴ This need for inquiry is accentuated when government admissions show the presumption has also been used as a shield to conceal. The government's only justification for originally withholding the truth about the "bugging" in *Nesline* was "that the Schipani⁷⁵ policy had not been adopted at that time." At the court's rejoinder that "policy is one thing; truthfulness is another", the prosecutor explained that, before *Schipani*, "the policy simply was that the defendants had to make their showing under Nardone." Absent such a showing by the defendant, the government had "no policy [of] delving deeply into what may have gone on" ⁷⁶

In the context of this record, any reasonable and objective man would have to conclude that the truth will only be learned by requiring those with personal knowledge to take the stand under oath, subject to the full rigors of cross-examination.⁷⁷

⁷⁴ As noted in *United States v. Procter & Gamble Co.*, 174 F. Supp. 233, 237 (D.N.J. 1959), on remand from the Supreme Court in *Procter & Gamble Co. v. United States*, 356 U.S. 677 (1958):

"[T]his presumption of regularity . . . is effective, like other presumptions of fact, only in the absence of evidence to the contrary."

⁷⁵ See text at note 73 *supra*.

⁷⁶ *Supra* note 71 at 10-13, 18-19.

⁷⁷ By way of analogy, a party may not obtain summary judgment without subjecting his own witnesses to cross-examination if it appears that they alone have the knowledge necessary for full disclosure of the truth. See, e.g., *Garrett Biblical Institute v. American University*, 82 U.S. App. D.C. 265, 267, 163 F. 2d 165, 267 (1947); *Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620 (1944); *Poller v. Columbia Broadcasting System*, 368 U.S. 464, 473 (1962).

B. The Hearing Was So Restricted as To Prevent Discovery of What the Government Overheard Through the Confessed Illegal Eavesdropping.

The court below erroneously denied appellant access to the records of conversations illegally overheard through the Black, Levinson and Sigelbaum "bugs".

Appellant had standing to object to the "bugging" of the Black hotel suite. As shown by undisputed testimony, corroborated in part by the FBI logs of the "bug", he was associated with Black in business, had a key to the suite, was authorized to use the suite at all times and frequently did use it for meetings and for telephoning. JA 121-22. As a permanent invitee, his standing to demand the records of the "bugging" of the suite was no less than Black's. Black, moreover, to the extent he had any greater right, had consented to a disclosure to appellant of everything overheard by the "bug". JA 203-04. A proprietary interest in an apartment no greater than appellant had here confers standing as to *all* materials illegally seized therefrom. *Walker v. Pepersack*, 316 F.2d 119 (4th Cir. 1963); *United States v. Paroutian*, 299 F.2d 486 (2d Cir. 1962); *Jones v. United States*, 362 U.S. 257 (1960). This rule applies even to areas assigned for only temporary use. *United States v. Blok*, 88 U.S. App. D.C. 326, 188 F.2d 1019 (1951) (office worker's desk); *Rios v. United States*, 364 U.S. 253 (1960) (occupant of a taxicab). It was therefore error not to turn over to appellant all the Black "bugging" materials. Giving him only those conversations which the court thought might have been his was inadequate recognition of his legal right.

As to the Levinson and Sigelbaum "buggings", appellant was shown only those conversations in which he was found to be identified as a participant. The FBI monitors testified that many of the overheard conversants were unidentifiable. JA 185, 191-92, 193, 247-48, 270-71, 280. Clearly, the determination whether an unknown conversant was appellant could best be made by appellant himself. The trial court recognized this fact in the case of the Black

"bug" when it turned over to the defense the logs on all unidentified conversants. 262 F. Supp. at 666. Inexplicably, the court refused to apply the same rationale to the Levinson and Sigelbaum "bugs". In the case of the Sigelbaum "bug", the court, having erroneously withheld the material from appellant, compounded its error by delegating part of the task of inspecting the materials to Judge Aubrey Robinson who, with all respect to him, had neither the knowledge nor the authority to discharge it. *Id.* at 666-67.

Appellant's right of access to the "bugging" materials, moreover, went beyond his own conversations. The FBI monitors testified that they would review prior logs before a day's monitoring and would exchange notes with each other to familiarize themselves with the subject matter likely to be overheard. JA 180-83, 268-70. One monitor testified that he first became aware of appellant and his relationship to Sigelbaum through this practice. JA 268-70. It is therefore apparent that "bugged" conversations of appellant contributed to understanding and reporting other conversations *about* appellant or his business—and vice versa. For example, if Levinson immediately called "Cliff",⁷⁸ as he said he intended to do in the "bugged" conversation of November 1, 1962, JA 77, the monitor would have used his knowledge gained from appellant's conversation to record and interpret the call placed to "Cliff". The call to "Cliff" would be fruit of the poisonous tree. Appellant should therefore have been given access to all logs, verbatims, and summaries from the Levinson and Sigelbaum "bugs" which concern him in any way, even if he was not a participant.⁷⁹

⁷⁸ Obviously Clifford Jones, the alleged co-conspirator named in Count 9.

⁷⁹ The court seems to have had some concern that letting appellant see the "bugged" conversations would compound the government's original invasion of privacy. 262 F. Supp. at 666. But the owners of the premises, who had an absolute right to the materials, had consented that they be disclosed to appellant. JA 203-04. The court's concern, moreover, could easily have been satisfied by a protective order against unlimited disclosure, without depriving appellant of the tools of his defense. See F.R. Crim P. 16(e).

C. The Hearing Was So Restricted as To Prevent Discovery of What Use the Government Made of Those Conversations Which It Confessed It Illegally Overheard.

The court unduly restricted appellant's inquiry into the admittedly illegally seized conversations and prevented any inquiry whatsoever into uses made of these conversations and the leads obtained from them.

In *Black v. United States*, 385 U.S. 26 (1966), after certiorari had been denied, the Solicitor General advised the Court that Black had been overheard, by means of an illegal listening device, in conversations with his lawyer. The admission was made even though Black had filed no motion to suppress. The Court thereupon issued the following order, 384 U.S. 983 (1966):

"The Court desires a response from the Government in this case, not limited to, but directed toward [1] the kind of apparatus used by the Government; [2] the person or persons who authorized its installation; [3] the statute or Executive Order relied upon; [4] the date or dates of installation; [5] whether there is in existence a recording of conversations heard; [6] when the information concerning petitioner came into the hands of any attorney for the Government and to which ones; [7] as well as what use was made of the information in the case against petitioner." (Numerals added.)

On the Solicitor General's response to this order, the Supreme Court reversed Black's conviction and remanded the case for a full evidentiary hearing on *all* the matters revealed by the response. *Black v. United States*, 385 U.S. 26 (1966). Of necessity, the hearing was to treat fully each issue mentioned in the order, including "what use was made of the information."

In the case at bar, despite the fact that one of the admitted "buggings" of appellant was through the very device involved in *Black*, the court refused to allow appel-

lant to interrogate government agents on five of the seven points of the *Black* order. When defense counsel asked who authorized installation of the *Black* device (*Black* Order, Points 2 and 3), a prosecution objection was sustained. JA 131-32. When referred to the *Black* order, the court answered enigmatically that the case at bar involved a "trial situation." JA 132. The court refused to allow interrogation on the type of device used in the admitted Las Vegas "bugging" of appellant and the exact place and method of installation. JA 202-07. (*Black* Order, Points 1 and 2). The court cut off all interrogation on the identity of the government attorneys who first received the seized information and the time when they first received it. M.T. 335-36. (*Black* Order, Point 6.)

Most important and most prejudicial to appellant, the court rebuffed all attempts to trace "what use was made of the information" admittedly illegally seized, a crucial issue in *Nardone* as well as *Black*.⁸⁰ (*Black* Order, Points 6 and 7.) In the first *Nardone* case, the Supreme Court had simply ruled the intercepted conversations themselves inadmissible. *Nardone v. United States*, 302 U.S. 379 (1937). In the second appeal, it extended the ruling to all leads as well and held that in a pretrial hearing,

"The trial judge must give opportunity, however closely confined, to the accused to prove that a substantial portion of the case against him was a fruit of the poisonous tree." 308 U.S. at 341.

⁸⁰ The court refused to permit the appellant (1) to trace the illegally seized information into FBI investigation reports, JA 146, 164-66, 233-37, 94, (2) to obtain production of FBI reports on the appellant in FBI National Headquarters or relevant FBI field offices to determine whether they contain reference to this information, JA 94, (3) to call FBI agents writing reports which were used by attorneys preparing the *Baker* case, JA 81, (4) to call the FBI custodians of the illegally seized materials in Washington to determine the use made of them, JA 81, and (5) to produce files on appellant from the Organized Crime and Racketeering Section of the Department of Justice, the office to which, according to the Solicitor General's *Black* memorandum, reports containing "bugged" information were sent. JA 94.

In *United States v. Coplon*, 185 F.2d 626, 637 (2d Cir. 1950), Judge Learned Hand transferred the burden on this issue to the prosecution. He ruled:

"Since the prosecution had the burden of showing that the 'taps' did not 'lead' to any of the evidence, it could not carry that burden without showing that none of the 'taps' did so"

This *Coplon* modification has been generally accepted by the courts and the government conceded its applicability here. JA 111-12.

Having thus frustrated any tracing of the use made of the illegally seized materials, the court proceeded to find that there was no "causal connection" between this material and "matters contained in the indictment." 262 F. Supp. at 666-67.

This disposition of the matter is erroneous in two respects. It fails to recognize that the "bugged" material may have been immediately related to the facts the government was going to prove, even if not apparently related to the conclusory allegations of the indictment. Furthermore, it ignores the possibility that leads produced by the "bugged" material may have been directly related both to the allegations of the indictment and to the government's supporting proof. "Leads" may produce evidence wholly unrelated to the original illegal search and seizure. See *Wong Sun v. United States*, 371 U.S. 471 (1963); *Smith v. United States*, 120 U.S. App. D.C. 160, 344 F.2d 545 (1965). Without a full inquiry into the use of the "bugged" material as leads, the court below could not properly have concluded that the material had no "causal connection" with the case against appellant.

**D. As to One of the Government's Confessed Eavesdroppings,
the Court Effectively Denied Any Hearing at All by Con-
ditioning Hearing Rights Upon Waiver of Public Trial
and Effective Assistance of Counsel.**

The government admitted having overheard appellant's conversations over one "bugging" so "secret" that the revelation of its existence or contents could impair national security. *Supra*, 75-76. Under those circumstances the government had a choice: it could prosecute appellant and ignore national security; or it could protect national security and drop the prosecution. *United States v. Andolschek*, 142 F.2d 503, 506 (2d Cir. 1944), cited with approval in *United States v. Reynolds*, 345 U.S. 1, 12 (1953) and *Roviaro v. United States*, 353 U.S. 53, 61 (1957). The government was not entitled to transfer the onus to appellant, and force on him the choice of a secret hearing on this aspect of his motion, or no hearing at all. Appellant rejected a secret hearing and, thus, had none.

By denying appellant an unrestricted, open hearing, the Court denied him his rights under the Sixth Amendment to a public trial and to effective assistance of counsel.

A hearing pursuant to F.R.Crim.P. 41(e) is part of the "criminal prosecution" or "trial" required by the Sixth Amendment to be "public". In *DiBella v. United States*, 369 U.S. 121, 131 (1961), the Court said: "Orders granting or denying suppression . . . are truly interlocutory, for the criminal trial is then fairly in train." To the same effect are *United States v. Wallace & Tiernan Co.*, 336 U.S. 793, 803 (1949); *Cogen v. United States*, 278 U.S. 221, 227 (1929); *United States v. Koenig*, 290 F.2d 166, 169 (5th Cir.), aff'd, 369 U.S. 121 (1961); *United States v. Bell*, 120 F. Supp. 670 (D.D.C. 1954); *Chester v.*

Ross, 231 F. Supp. 23 (N.D.Ga. 1964).⁸¹ This conclusion is bolstered by those cases holding that related Sixth Amendment rights accrue at or even before the time the indictment is returned. *E.g.*, *Massiah v. United States*, 377 U.S. 201 (1964); *Hamilton v. Alabama*, 368 U.S. 52 (1961); *Jones v. United States*, 119 U.S. App. D.C. 284, 342 F.2d 863 (1964).

The assertion of the constitutional right to public trial springs not from captiousness, but from the well-founded assumption that secret proceedings may be a cloak for injustice.⁸² Testifying in public, a witness is less likely to lie. "Environed as he sees himself by a thousand eyes, contradiction, should he hazard a false tale, will seem ready to rise up in opposition to it from a thousand mouths." Bentham, *Rationale of Judicial Evidence*, Bk. 2, ch. X, § 2 (1st ed. 1827). Public trial is therefore, a check on veracity and recollection. 6 Wigmore, *Evidence* § 1834 (3d ed. 1940). This check is no less vital in an evidentiary hearing before the court than in the ultimate taking of testimony before the jury.

Moreover, the right to public trial being absolute, its denial is reversible error without any requirement that the accused show prejudice, *United States v. Kobli*, 172 F.2d 919, 921 (3d Cir. 1949). Consequently, appellant was within his rights to refuse the secret hearing offered him

⁸¹ Even if the Sixth Amendment guaranty were not applicable due process of law would require that all adversary proceedings incident to criminal trials be public. See 6 Wigmore, *Evidence*, §§ 1834, *et seq.* (3d ed. 1940). Thus, though a criminal contempt proceeding is not a "criminal proceeding", such as to require a "public trial", due process demands publicity. *Levine v. United States*, 362 U.S. 610 (1960). And, though the United States Supreme Court has not held the public trial guarantee applicable to the states, it held due process was violated by the Michigan "one-man grand jury" *in camera* procedure. *In Re Oliver*, 333 U.S. 286 (1949).

⁸² "[I]n comparison with publicity, all other checks are of small account." Bentham, *Rationale of Judicial Evidence*, Bk. 2, ch. X, § 2 (1st ed. 1827), cited with approval in *In Re Oliver*, 333 U.S. 257 (1948).

and the denial of the public hearing to which he was entitled requires reversal of his conviction.

Moreover, the Sixth Amendment guarantees also the "effective" assistance of counsel. That guarantee requires that his counsel not be procedurally restricted from serving him properly. *Powell v. Alabama*, 287 U.S. 45, 57-58 (1932). The inhibition here placed upon counsel by the secrecy order, by rendering it impossible for them to conduct any kind of investigation, deprived appellant of their effective assistance. The instant case is in this respect analogous to those in which counsel is denied adequate time for preparation or adequate opportunity to consult with his client. *Tinkle v. United States*, 254 F.2d 23 (8th Cir. 1958); *United States v. Koplin*, 227 F.2d 80 (7th Cir. 1955); *Willis v. Hunter*, 166 F.2d 721, 723 (10th Cir.), *cert. denied*, 334 U.S. 848 (1948).

E. The Hearing Was Restricted to the Relation of the Illegal Eavesdropping to the Indictment; the Relation of the Eavesdropping to the Government's Evidence Was Deferred to the Trial.

The court's refusal to permit inquiry at the pretrial hearing into the connection of the "bugged" material with the government's *evidence*, as distinguished from the *indictment*, and its deferring of that issue until the trial, 262 F. Supp. at 667, violated the *Nardone* requirement that such hearings be held before trial so as not to interrupt the trial.⁸³ That requirement was especially imperative here, in view of the court's intention to sequester the jury for the duration of the trial. JA 343-44. Moreover, this Circuit has specifically held that F.R.Crim.P. 41(e) requires that hearings on motions to suppress trial evi-

⁸³ Moreover, *Nardone* clearly contemplated that the pretrial hearing would concern the evidence to be presented at trial since it referred to the "case against" the accused and the government's "proof" as being the subject matter of such a hearing. 308 U.S. at 341.

dence be held before trial. *Battle v. United States*, 120 U.S. App. D.C. 221, 345 F.2d 438 (1965).

The prejudice to appellant is clear. Thwarted in his pretrial attempt to trace the leads from the illegally seized materials, he was in no position to detect when evidence at trial might have resulted from an illegal lead. Furthermore, as happened here, courts tend to shortcut proceedings when issues are raised at trial which logically should have been heard before trial.

The issue arose at this trial when the prosecutor confronted appellant on cross-examination with the fact that he had been in Las Vegas on November 2-4, 1962, a fact learned by the FBI through the Las Vegas "bug." Appellant asked for a mistrial on the ground that the prosecutor's cross-examination was based on the illegally seized conversation. "Causal connection" had been shown, for the subject matter was identical. At that point, the burden of going forward devolved upon the government. As stated in *Nardone*, once a connection is shown, it is the government's burden "to convince the trial court that its proof had an independent origin." 308 U.S. at 441. Moreover, just this June, in considering the problem of expunging probable taint, the Supreme Court stated that the government must "establish by clear and convincing evidence" that the questioned material is untainted. *United States v. Wade*, 388 U.S. 218, 240 (1967). The court below placed no burden of any kind upon the government. It denied appellant's motion for mistrial without explanation. To deal with the problem of the tainted evidence, a problem which would have been obviated by a proper pretrial hearing, the court simply instructed the jury to disregard the dramatic confrontation between the prosecutor and appellant—a truly impossible task. The court's short-cut procedure was obviously an inadequate substitute for a mistrial, the only remedy which could have

sufficed at that point and one which became necessary because of the court's refusal to allow full pretrial hearing.

The denial of any hearing, even at trial, on suppression of tainted evidence requires not merely a remand for a post-trial hearing, but a reversal for a new trial. In *Battle, supra*, the trial court, as here, deferred hearing on a motion to suppress until the questioned evidence was offered at trial. When it was offered, the court, again as here, refused a hearing altogether. This Court ruled:

"The proper sequence is to comply with Rule 41(e) by a hearing before trial as the rule provides. This protects the trial from error and enables the defense at the most appropriate time to obtain a ruling on the usability by the prosecution of important evidence." 120 U.S. App. D.C. at 223, 345 F. 2d at 440.

The Court ordered a new trial as the only means of assuring compliance with the Rule.

F. In the Conduct of the Hearing the Court Erroneously Permitted the Government To Rest on Sub-Standard Proofs.

We have shown at p. 82, *supra*, how the FBI has practiced, with regard to its illegal electronic eavesdropping activities, a course of action designed to delude the government's own lawyers, defense counsel, and, consequently, the courts. In that light, to allow the government such procedural shortcuts as introducing affidavits in lieu of cross-examinable witnesses and edited copies in lieu of original records, is more than merely technical error. It makes a futile exercise out of the hearing solemnly directed by *Nardone*.

The dangers inherent in short-cut procedures and the blue-print for avoiding them are illustrated in the *Procter & Gamble* cases. The Supreme Court had held that the defendant in a civil antitrust case was entitled to inspect grand jury minutes if the government, in causing the

grand jury investigation to be conducted, had no intention of seeking an indictment. *Procter & Gamble v. United States*, 356 U.S. 677, 683 (1958). On remand, the Attorney General admitted, in answer to written interrogatories, that intent to seek an indictment had been abandoned near the end of the grand jury investigation. The court thereupon gave the defendant access to the grand jury minutes from that point forward. *United States v. Procter & Gamble*, 175 F. Supp. 198 (D.N.J. 1959). The District Court, however, did not accept the Attorney General's statement on faith, even though given under oath. It ordered the Department of Justice to produce all its records relating to its decision to seek an indictment, or to its practice of using grand juries for discovery purposes. *United States v. Procter & Gamble Co.*, 25 F.R.D. 485, 488 n. 2 (D.N.J. 1960). Thereafter, depositions were allowed to be taken of the Attorney General, his executive assistant, the head of the Antitrust Division, his successor, the head of the Litigation Section of the Antitrust Division, and the attorney who conducted the grand jury. On the basis of this extensive discovery, the court found that, contrary to the prior statement of the Attorney General, there had never been an intent to seek an indictment. Consequently, the court ordered all the minutes turned over to the defense. *United States v. Procter & Gamble Co.*, 187 F. Supp. 55 (D.N.J. 1960). The government chose not to appeal.

In a very real sense, the FBI has been on trial in this case—largely, to be sure, *in absentia*, for that is what the court compelled. In that trial, the FBI has already confessed a massive course of illegality. Moreover, we have shown, from the Nesline records, that the FBI, like many another miscreant, in attempting to avoid discovery of its misconduct or to deprive its victims of any recourse against it, has not hesitated to withhold the truth, even from its own lawyers, thereby causing them to make misrepresentations to the courts. In these circumstances, we submit, the

Director of the FBI and his agents can hardly be entitled to be taken on faith to any greater extent than was the Attorney General of the United States in *Procter & Gamble*.

Because of all of the foregoing errors in relation to the suppression motion, this Court should reverse the conviction and remand the case for a new trial.

IV. THE COURT ERRED AS TO COUNT 1, IN (1) DENYING JUDGMENT OF ACQUITTAL, (2) PERMITTING THE GOVERNMENT, IN REBUTTAL, TO INTRODUCE EVIDENCE OF ADDITIONAL TAX ALLEGEDLY DUE, AND THEN REFUSING TO INSTRUCT THE JURY ON THE LAW REGARDING THE NEW EVIDENCE

A. Insufficiency of the Evidence To Sustain a Conviction

The jury had the following seven disputed questions to decide, see *supra*, pp. 6-12.

1. Did Baker wilfully omit to report his income from the Smathers land transaction?

2. Did Baker have any income from his association with Ernest Tucker?

3. Did Baker pay Jose Benitez \$700 in expenses in connection with the Borinquen Meat Products income?

4. Was Baker entitled to a deduction of \$100 per month for the River House apartment?

5. Did Baker wilfully cheat the government in treating the \$913.12 payment to Luther Hodges as interest?

6. Was Baker entitled to some or all of the offsets against income which he claimed at trial, but failed to take on his 1961 return?

7. Did Baker hold the IDS stock for less than six months?

The Court need not answer all the above questions favorably to appellant in order to reverse the Count 1 conviction. The government's expert charged appellant with additional

taxable income of \$5,002.37. Failure of proof as to any combination of untaken deductions or allegedly unreported income equalling or exceeding this amount requires reversal.⁸⁴

In an evasion case, the government must prove: (1) that the defendant owed more tax than he paid; (2) that the underpayment was substantial; and, (3) that it was wilful. Wilfulness, in a tax case, is one of the most strictly construed intent concepts known to the law: It comprehends, in the case of a felony, "evil motive and want of justification" and a conscious purpose to defraud. *Spies v. United States*, 317 U.S. 492, 498 (1943).

1. The Smathers Transaction.

Where was the evidence of wilfulness in the failure to report some of the income from the Smathers transaction while reporting the rest? Concededly, there was no direct evidence. Nor was there circumstantial evidence of the kind customarily relied upon: double sets of books, false entries or alterations, false invoices, destruction of records, concealment of assets, handling one's affairs to avoid making usual records, or any of the other badges of fraud set out by way of illustration in *Spies*, 317 U.S. at 499. By contrast, the evidence was that appellant saved receipts and vouchers carefully in a file folder and turned them over to the former IRS agent who made out his return, which return was then reviewed by an IRS agent officially designated to assist Capitol Hill employees with their taxes. There was no basis for the jury to conclude that the omis-

⁸⁴ Even assuming that the court should not accept all of appellant's contentions with respect to the evidence of tax due over and above that reported, the amount of the claimed deficiency is so small—about \$1,000—that the failure of proof by the government as to only one or two items would make the allegedly unreported income so insubstantial in relation to that reported as to require reversal. *Gross v. United States*, 286 F.2d 59 (2d Cir.) cert. denied, 366 U.S. 935 (1961).

sion of some of the Smathers transaction income resulted from anything but mistake.⁸⁵

2. The Tucker Income.

The insubstantiality of the government's case as to this item descends to the ludicrous. The case consists entirely of Tucker's self-professed intent, never expressed to Baker, that Baker should share fees Tucker received from two clients. Tucker admits he never paid Baker the money. He also admits that his own books show he did not credit the money to Baker, but treated it as his own income. These records, as Tucker's statements against his own pecuniary interest, are especially persuasive and, coupled with the fact that Tucker actually paid income tax on the money, would seem to dispose of the issue.

But the government, reluctant to give up, extracted from Tucker testimony that he had used some (but not all) of the income to pay certain of Baker's business obligations. Even if it were not so crystal clear that the income was Tucker's, the government's case would still be zero, for there is nothing to show Baker knew that any part of the money was being expended on his behalf. It is well-settled that A's intent is not imputable to B without proof that B knew what A was thinking and either acquiesced in it or ratified it. There must be "substantial proof . . . that defendant was aware of the relevant act committed by others

⁸⁵ The very fact that the dispute narrows down to so few items and that it consists in large part, as in the case of the Tucker and Hodges items, *infra*, of disagreements as to the treatment of items which were reported bespeaks an intent not to conceal, but to disclose. Moreover, the evidence is uncontradicted that appellant's return erred in the government's favor, as well as in his own. Throughout the trial, the government and the court below appear to have overlooked the Supreme Court's admonition:

"It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care. Such errors are corrected by the assessment of the deficiency of tax and its collection with interest for the delay." *Spies v. United States*, 317 U.S. at 496.

in his name." *United States v. DeLucia*, 262 F.2d 610, 613 (7th Cir. 1958), *cert denied*, 359 U.S. 1000 (1959).

3. The Borinquen Expense Deduction.

The government's own expert testified as follows:

Q. [by Mr. Williams] * * * If Mr. Baker paid expenses by a reimbursement check to Mr. Jose Benitez in connection with the Borinquen Meat Products deal in the amount of \$700, that would be a deduction, would it not, from the \$969 of income with which you have charged him?

A. If he paid it, yes, it would be a deduction. JA 834.

That Baker gave the \$700 check to Benitez, his partner in the meat venture, was not disputed. Baker testified that he sent it for Borinquen expenses. Mrs. Benitez confirmed the payment, but could not say whether it was in connection with Borinquen. She did say, however, that this was the only business her husband had with Baker in 1961. JA 446-47, 448-49. There was no evidence to suggest that this \$700 payment was anything other than it purported to be. Appellant was, therefore, entitled to deduct it as a business expense. Intent to evade taxes is negated, moreover, by the fact that he erred on the side of over-reporting his net Borinquen income, since he claimed only one-fourth of the proper deduction.

4. The River House Apartment Expense Deduction.

The government stipulated that Baker used the apartment for business purposes, and did not contradict his testimony that he made substantial expenditures for the apartment. All the government proved was that he received contributions from others toward the apartment expense. That fact, freely conceded by Baker, did not, however negate his burden to pay the balance of the expense—roughly \$3,000 per year. There was, therefore,

nothing to shake the reasonableness of his taking 40 per cent of that amount as a deduction. The amount he deducted was not specifically proven by records, but the law, at that time, required no meticulous recordkeeping to justify such business deductions, even for civil tax purposes. See *Cohan v. Commissioner*, 39 F.2d 540, 543-44 (2d Cir. 1930); *Sutter v. Commissioner*, 21 T. Ct. 170 (1953). There ought to be at least parity of treatment to a taxpayer under *criminal* indictment. Indeed, because the government must prove beyond a reasonable doubt that the deduction was fraudulent, *Cohan* and *Sutter* command acquittal on this branch of the case.

5. The Hodges Interest Deduction.

The uncontroverted evidence, from appellant and from Governor Hodges, is that Hodges, in his letter to Baker, called the \$913.12 payment "interest". Baker's business partner, Seby Jones, also called it "interest". Appellant's records show he acquiesced in this characterization without further examination. The government proved, at most, that he was wrong on the law. There was, moreover, no evidence from which the jury could find a wilful, evilly motivated desire to cheat the government, nothing to negate his bona fide reliance upon prima facie reliable judgments by the Secretary of Commerce and a long-time business associate.⁸⁶

6. The Untaken Deductions.

The presumption that a taxpayer took all permissible deductions and exclusions

"* * * may be rebutted by substantial evidence, . . . [citing authority], and the burden is then on the

⁸⁶ Further, if the notation "interest" made by appellant upon the letter from Seby Jones, DX 14, and the contents of that letter were not enough to justify a reasonable man in taking the deduction, appellant is in the same boat with the IRS agent who used that record, among others, to make out his 1961 income tax return.

government to supply evidence from which it would be inferred that either the claimed expenditures were not made or that they were not sufficient to offset the [unreported gain]." *Small v. United States*, 255 F.2d 604, 607 (1st Cir. 1958).

Appellant's evidence of the untaken interest deductions was uncontradicted and supported by checks. The evidence of losses and expenses in connection with the sale of two houses in North Carolina, was set out in memoranda and records. The interest paid to the First National Bank in Dallas was supported by the cancelled note, a check and a letter. The evidence entitling him to an additional sick pay exclusion was not contradicted. In short, he introduced substantial evidence that he was entitled to additional deductions. The government did neither of the things required by *Small*. It disproved neither the expenditures, nor their amount.

7. The IDS Transaction.

The errors of permitting the government to prove and the jury, uninstructed, to decide that appellant was not entitled to have treated his IDS gain as long-term are discussed in IV-B, *infra*.

What matters at this point is that there was absolutely no evidence from which the jury could have decided that the gain was long-term. As testified by appellant's expert and not denied by the government's expert, the trade advices alone; the only evidence the government offered cannot determine the date title passed. The government's burden of proof was, therefore, not sustained.

8. Conclusion.

The government failed to prove either that the defendant had net taxable income in addition to that reported, or that omissions or improper deductions were the result of "evil motive and want of justification". *Spies v. United States*, 317 U.S. at 498.

B. The Error of Permitting the Government To Stray Beyond the Pleadings and Then Refusing To Instruct the Jury on the Issues Thereby Raised.

During cross-examination of appellant, the government introduced its claim, for the first time in the case, that he had understated his 1961 taxable income as to the IDS stock, an item not listed in the bill of particulars, by an amount some \$7,000 greater than had been alleged in the indictment. The transaction concerned the IDS stock referred to in the statement of facts, p. 10, *supra*. Despite defense objection, the court erroneously allowed the government to proceed. The jury was led into the thicket of short-term versus long-term capital gains, further confused by a difficult question of chattel security under Texas law. The court then compounded its error by total failure to instruct the jury on the issue thus newly introduced.

1. The Impermissible Evidence.

Clearly, the claimed \$7,235.91 IDS understatement could not have been included in the \$4,888.71 understatement alleged by the indictment. The bill of particulars, moreover, was silent as to IDS. Not only was the government foreclosed by the pleadings from making a point of the IDS transaction, but it had known of it for months and had made a conscious decision not to rely upon it. JA 1049.

The evidence would, in any event, have been inadmissible as a matter of tax law. The government admitted that it could not claim the IDS gain as an item of fraudulent understatement, but would argue it only on the quantum of appellant's tax liability. In a specific item prosecution, however, the government may not allege some items as fraudulently omitted and others as omitted in good faith. In a criminal case, as opposed to a civil fraud case,⁸⁷ wil-

⁸⁷ The assessability of a civil fraud penalty upon the whole amount of a deficiency, not merely the fraudulent portion, depends on an express statutory authorization, 26 U.S.C. § 6653(b), which does not apply in a criminal case.

fulness must be shown on the whole of the claimed deficiency.

By no theory, therefore, could the government have introduced evidence of the IDS transaction in its case-in-chief.

What alchemy made the evidence thereafter admissible? Appellant had testified on direct to a deductible \$1,702 interest payment he had made on the money borrowed to purchase the IDS stock. The government argued that this direct testimony opened up for challenge on cross every aspect of the IDS transaction, including its production of income. The court allowed the evidence not only upon that ground, but also upon the broader ground that once appellant had claimed the benefit of the untaken interest deduction, his entire return, not merely the transaction from which the interest arose, was opened up for inquiry on cross. The government's theory dissolves the limitations of the indictment and the bill of particulars. The court's theory does that and more: It makes it impossible to prepare a defense to any specific income tax prosecution and leads to an uncontrollable multiplication of trial issues to the great prejudice of the accused and the even greater confusion of the jury.⁸⁸

In *Small v. United States*, 255 F.2d 604, 607 (1st Cir. 1958), it was said that the government's recourse, when the defendant introduces evidence of offsetting deductions in a tax evasion case, is to prove "either [that] the claimed expenditures were not made or that they were not sufficient to offset" the deficiency. It may not allege in the indictment and the bill of particulars just enough to make a case and then after the defense is made, bring in other transactions which the defendant could not have prepared to meet. The requirement that the indictment inform the defendant of the charge would become meaningless. This

⁸⁸ We suggest that the jury's request for guidance on the IDS issue in the course of its deliberations is a fair example of such confusion.

Court has in another context sharply warned against the dangers of permitting the prosecution to expand the compass of a criminal trial in the name of impeachment or rebuttal. *Johnson v. United States*, 120 U.S. App. D. C. 69, 344 F.2d 163 (1964).⁸⁹

2. The Failure To Instruct the Jury.

The error having been made, it devolved upon the court to instruct the jury concerning the complex legal issue thus newly raised. Specifically, the court should have instructed the jury as to the legal significance of "trade date" and "settlement date" when one was two days short of the six-month holding period and the other two days over, JA 1320-21, and as to the effect, under Texas law, of the lender's collateral interest as embodied in the trust receipt, JA 1324. These exhibits were substantially the only evidence in the record concerning the IDS transaction. Moreover, without instruction, what was the jury to make of the uncontradicted testimony of appellant's expert that the long term—short term issue could not be resolved from the purchase and sales advices alone. JA 1170-74.

The defense, on this state of the record, requested an instruction that the gain was long term, because the relevant Texas and federal law required such a ruling and the government had utterly failed to prove that the gain was not long term. JA 1325; T. 3029-38. The court had no choice but to take the issue out of the case and clarify the record which it had allowed the government to befuddle. The requested instruction, stating that there had been evidence on the reporting of the IDS gain as long-term and concluding, "You are instructed that the gain in question was long term capital gain and was, therefore, properly reported by the defendant," JA 1325, was required by *United States v. Long*, 61-1 U.S.T.C. ¶9118, at 79, 171

⁸⁹ The "usual rule will exclude all evidence which has not been made necessary by the opponent's case in reply." 6 Wigmore, *Evidence* § 1873, at 511 (2d ed. 1940) (emphasis in original).

(E.D.N.C. 1960). Indeed, it was virtually identical to that given in *Long*. The court refused to grant the instruction, but said it would give *some* instruction dealing with IDS. T. 3037-38. But the charge to the jury, as given, contained no reference whatever to IDS, or to the law applicable to short term and long term gain, or to how the holding period for stock is determined for tax purposes.⁹⁰

When the jury asked for guidance on the IDS transaction, the court would go no farther than to instruct them that the government relied upon it not as an item fraudulently misreported, but as an item upon which more tax was due than had been paid. Thus despite the jury confusion demonstrating the need for clear instruction, see *McClanahan v. United States*, 272 F. 2d 663, 666 (5th Cir. 1959), and despite the surpassing complexity of Count 1,⁹¹ the court ignored the salutary rule stated for cases of this kind in *Jones v. United States*, 164 F. 2d 398, 400 (5th Cir. 1947):

"It was particularly important that [appellant] be tried not on general principles as to whether he was an unworthy character but on specific instructions applicable to the law and the facts of the case on trial so that the jury could reach a fair and correct determination."

In *Jones*, the Court authoritatively dispelled the idea that in a complex tax case, a general charge is sufficient. See especially 164 F. 2d at 400 n. 3. Cf. *Tatum v. United States*, 88 U.S. App. D.C. 386, 190 F. 2d 612 (1951). In this case, there was not guidance for the jury, but lack of it. Thus, the conviction as to Count 1 must be reversed.

⁹⁰ The only "instruction" the jury received was government counsel's wholly gratuitous and entirely misinformed judgment during final argument that the "trade dates" on the purchase and sales advices control the determination, and that therefore the gain was short term. Such argument "constitutes an aggravation . . . of . . . the court's refusal to instruct." *United States v. Phillips*, 217 F.2d 435, 440 (7th Cir. 1954).

⁹¹ Not to mention the eight other counts. See I, *supra*.

V. THE ERRONEOUS LIMITATION ON CROSS-EXAMINATION OF THE SEVEN SENATORS AND ONE CONGRESSMAN REQUIRES REVERSAL OF COUNTS 2 THROUGH 7

The gist of the government's case on Counts 3 through 7 (and, derivatively, Count 2) was that the \$99,600 collected by appellant from the savings and loan executives as political campaign contributions was not devoted to that purpose, but was converted to his own use. To the extent that he turned over the money for campaign use the government would have to concede that he was not guilty of stealing it.⁹² Government witness Kenneth Childs testified that appellant represented himself to be a collector for Senatorial campaigns and named seven Senators and one Congressman as needing campaign help. The most Childs' testimony comes to, is that Baker meant him to understand that the money would be used to help the candidates he had named. *None* of the contributors testified that Baker ever said he would transmit the money *directly* to any of the named persons. Assuming the jury believed the contributors' testimony, the government had to prove that the contributions never reached the named candidates: Senators Fulbright, Hayden, Dirksen, Smathers, Carlson, Morton and Bennett and Congressman Mills.

To that end, and with great dramatic effect, the government brought the eight notables to the witness stand to put, to each of them,⁹³ the question:

"In connection with that November 1962 election, to the best of your knowledge, did Robert G. Baker

⁹² Thus, when it found in the records of the Senatorial Campaign Committee a listing of a \$1,000 contribution by Baker, the government scaled down its claim from \$99,600 to \$98,600.

⁹³ When the third witness, Senator Hayden, took the stand, defense counsel stipulated that his testimony would be the same as that of the first two. JA 614. He also offered to stipulate that the remaining five witnesses would testify to the same effect, but the government, while willing to accept the stipulation, insisted on the dramatic advantage of parading the witnesses to the stand for separate stipulations. JA 614-19.

make any political contribution to you either on behalf of himself or others from October 21, 1962 to any time thereafter."

and to get from each the answer:

"He did not."

This testimony did not, of course, quite prove what the government needed to prove. While the witnesses denied that they had received money from Baker *directly*, they did not deny, because they were not asked, that they had received any of the savings and loan money *indirectly* through some intermediary. Lest the jury misunderstand the testimony as sufficiently sustaining the government's burden, the defense's first question on cross-examination of the first witness was:

"Congressman Mills, did Senator Kerr make funds available to you during—."

The government objected to the question as beyond the scope of direct and the court sustained the objection. JA 610-11.⁹⁴

An application of simple logic demonstrates the court's error. If the government's question was designed to mislead the jury into believing it had sustained its burden of proving that the witnesses had not received any of the savings and loan money, it would obviously be proper to correct the erroneous impression on cross-examination. Thus, had the question been "Did you receive any of the money from Baker, directly or indirectly?", no one can doubt that it would be proper cross to inquire into receipt of funds from Senator Kerr. On the other hand, if the government meant the jury to understand only what the question specifically covered, that is, that Baker, *person-*

⁹⁴ This ruling was made applicable to the other seven witnesses as well. JA 614-19.

ally, had given the witnesses no money, then the question was irrelevant and the testimony should have been stricken.

Indeed, after inhibition of the cross-examination, the defense urged that alternative, stating:

"Your Honor, I think that the testimony is irrelevant and I think it should be stricken because if he is just going to put people on the stand for the isolated purpose of showing that Baker didn't hand any money to these people, it doesn't prove anything. The question is whether any of these funds went to these men or any of the other people." JA 612.

The court's reply was:

"I just have to receive the evidence as it comes to me when it appears to be properly presented. I think the evidence so far from this witness is properly presented and I deny your motion to strike." *Ibid.*

The court thus appears to have treated the government's question as the beginning of a line of proof and, as such, relevant, on the assumption that the line of proof would be completed. If that is so, however, the court was misled, for the objectionable question was the sum total of all the evidence the government offered on the issue.

By this combination of two rulings, at least one of which was necessarily erroneous, the government managed to secure the tremendous impact upon the jury of eight very eminent witnesses apparently supporting the prosecution theory. The defense was robbed of the opportunity, at the time of the impact, to show the utter worthlessness of the evidence.

Under the settled rule, the defendant's opportunity to make a witness spell out on cross-examination the rest of a story he has begun on direct is a matter of absolute right. *Radio Cab v. Houser*, 76 U.S. App. D.C. 35, 37, 128 F. 2d 604, 606 (1942); *Lindsey v. United States*, 77 U.S. App. D.C. 1, 2, 133 F. 2d 368, 369 (1942); *Atlantic Greyhound*

Lines v. Isabelle, 81 U.S. App. D.C. 221, 157 F. 2d 260 (1946). Holding the defense question about Kerr to be beyond the scope of the direct flatly contradicts the rule that "it is proper to permit upon cross-examination the bringing out of anything tending to contradict, modify or explain the testimony given by a witness in his direct examination." *Mintz v. Premier Cab Assn.*, 75 U.S. App. D.C. 389, 127 F. 2d 744 (1942). Moreover, the issue being whether the money collected by Baker reached the witnesses in any way, when they testified they did not receive it directly from him, it was proper cross-examination to show, as part of the same transaction, that they did receive it from Kerr. *Gilmer v. Higley*, 110 U.S. 47 (1884).

To say, as the Court did, that the defense had to wait until the end of the government's case and then call the eight witnesses as its own to ask the relevant question, is contrary to law and reason.⁹⁵ The only purpose it serves is to compound the defense disadvantage of having to pull from the mouths of unwilling witnesses details which they obviously would prefer to keep private, by the additional disadvantage of having to strike after the iron has cooled off.

The erroneous denial of appellant's right to test the meaning of the eight witnesses' testimony goes to the heart of Counts 3 through 7 and requires reversal of the conviction on those counts. It follows, moreover, from the indictment and the government expert's concession, JA 849-50, that the conviction of the derivation Count 2 must also be reversed.

⁹⁵ As the Sixth Circuit said in *Banning v. United States*, 130 F.2d 330, 339 (1942): "The rule prevails that it is competent on cross-examination to develop all circumstances within the knowledge of a witness which qualify or destroy his direct testimony, although strictly speaking they may constitute new matter and are a part of the cross-examiner's own case."

VI. THE COURT ERRED IN REFUSING TO TAKE THE JURY'S VERDICT ON COUNT 4 AND IN SUBSTITUTING ITSELF FOR THE JURY IN FINDING VERDICTS ON COUNTS 5 AND 6

The jury was instructed as to Counts 3 and 4 and, similarly, as to Counts 5 and 6, that appellant could be convicted, at most, on only one of each pair. As to the first pair, it found him guilty on Count 3, but, having been asked for no verdict on Count 4, gave none. As to the second pair, it found appellant guilty on both counts. See p. 24, *supra*.

The court's method of correcting this hodge-podge was to rule as a matter of law that appellant was not guilty on Counts 4 and 6, but was guilty on Counts 3 and 5. Far from correcting the errors, the court compounded them, necessitating a new trial on Counts 3 through 6.

The first error was the omission (and, after attention had been called to the omission, the refusal) to take the jury's verdict as to Count 4. It was not enough simply to instruct the jury to acquit on Count 4 if it should convict on Count 3. The court was required to follow through by *taking* the jury's verdict of acquittal on Count 4, if that was the determination the jury reached.⁹⁶ "Obviously in every case where there are two or more counts . . . , proper practice will require the jury to render a separate verdict on each count." *United States v. DiMatteo*, 169 F. 2d 798, 801 (3d Cir. 1948).

This is not a merely technical error. The government may argue that appellant, should he be prosecuted again for the crime alleged in Count 4, could demonstrate, by an analysis of the record of the instant case, that the larceny of which he was convicted in Count 3 precludes a new prosecution for larceny after trust of the same money. Appellant is entitled, however, to more than that. He is entitled to a clear and dispositive plea of *autrefois acquit*.

⁹⁶ From the jury's guilty verdicts on both of Counts 5 and 6, it is easier to assume an intention to convict on Count 4 than one to acquit.

In *DiMatteo, supra*, where the jury had neglected to render a verdict as to the second of two counts and the court, by way of "correction", had then dismissed that count and stated that "there could be no conviction in the future" as to it, the Third Circuit, reversing the conviction on the first count, said:

"The trial judge obviously was of the opinion that a plea of *autrefois acquit* might lie if the defendant was brought to trial again on the second count.

"With this view we cannot agree for actually the verdict did not and could not go to the second count." 169 F. 2d at 801.

Even more serious than the error of not taking the jury's verdict on Count 4 was the error of selecting, between the jury's two "guilty" verdicts on Counts 5 and 6, the one which was to remain as "guilty" and the one which was to become "not guilty". On this point as well, Judge Biggs' opinion in *DiMatteo* is persuasive.⁹⁷

"While the motion was one purportedly made to clarify the record, what transpired in substance was that the court itself rendered a verdict of 'guilty' on the first count and a verdict of 'not guilty' on the second count. The court was without authority to grant the motion for in doing so it usurped the function of the jury in violation of the Third Article and the Sixth Amendment of the Constitution of the United States which guarantee trial by jury to the defendant." *Id.* at 801.

What was done here was even worse than the error in *DiMatteo*. There the court usurped the jury's function only to find the defendant not guilty of a count. Here, in addition to acquitting him on Count 6, it found him guilty

⁹⁷ The defendant there had been charged in the first count with forging an endorsement on a stolen bond and, in the second, with cashing the bond. He had not been charged with the theft of the bond. The jury found him "guilty of forging . . . and not guilty of the theft" 169 F.2d at 800. On motion by the prosecutor, the trial judge "clarified" this verdict by treating it as a verdict of guilty on the first count and he dismissed the second count.

on Count 5. In effect, the court directed a verdict of guilty on that count, something which it may not do under any circumstances, "no matter how conclusive the evidence." *United Bhd. of Carpenters v. United States*, 330 U.S. 395, 408 (1947).

In a similar situation, the Supreme Court has held it error for a court to choose between two mutually exclusive guilty verdicts and, as the only means of curing the error, has ordered a new trial. In *Milanovich v. United States*, 365 U.S. 551, 555-56 (1961), the petitioner had been convicted, as to the same stolen money, of both larceny and receiving stolen property. The Fourth Circuit and the Supreme Court agreed that the verdicts were mutually exclusive and could not stand. The remedy chosen by the Fourth Circuit was to vacate the concurrent five-year sentence imposed on the receiving count, leaving standing the ten-year larceny sentence. The Supreme Court held this an invasion of the jury's province and reversed for a new trial. Similarly, a new trial is required here.

Since, as we have shown, these errors require a reversal of Counts 3 through 6, the concession of the government's expert, referred to at p. 109, *supra*, requires that Count 2 be reversed as well.

VII. THE COUNT 8 CONVICTION SHOULD BE REVERSED, BECAUSE (1) THE COUNT STATES NO OFFENSE; (2) THE EVIDENCE IS INSUFFICIENT TO SUSTAIN THE VERDICT; AND (3) THE COURT FAILED TO INSTRUCT THE JURY CONCERNING THE APPLICABLE LAW AND THE DEFENSE THEORY.

A. Count 8 States No Offense

Count 8, as already stated, charged no tax evasion. It charged only that Bromley's method of reporting the flow of money through him from the payor corporations to Baker was wrong and that appellant's advice to Bromley to use that method was a crime.

The government suggests that Bromley's proper course would have been to ignore the money, that is, report none

of it on his Schedule C. If IRS asked for an explanation of the payors' informational returns (Form 1099) showing payments to him, he could presumably obtain the cancelled checks from the payors and explain from the endorsements that he had given the money to Baker. Alternatively, he could have attached a rider to his return explaining the transactions.

We submit that reporting the money in his Schedule C was not only a permissible and reasonable course for Bromley, but also the only safe course. Given the Forms 1099 filed by the payors and their records of payment to Bromley, had he not reported receipt of the funds, he might have had to defend his failure to pay income tax on the money. Such was the fate of the taxpayer in *United States v. Mavroleon*, 58-1 USTC ¶ 9445 (S.D.N.Y. 1958), who had received monies from a corporation and then disbursed them to others. The court dismissed the civil deficiency case, but having to litigate such a contention is nonetheless onerous.⁹⁸ The government's attitude, that the taxpayer has the choice between the rock and the whirlpool in dealing with the IRS' tax forms, is intolerable. Since Bromley had a right to report the money, Baker committed no felony by advising him to do so.

The reporting method chosen was to include the money as "gross receipts" on line 1 of Schedule C and then deduct it as a wash transaction. Schedule C, as the court may observe in Appendix B, has no spot between lines 1 and 10 for taking such a deduction. The intervening lines apply peculiarly to merchants, not to professionals. Thus, Bromley was forced by the IRS' own Schedule C to carry the line 1 "gross receipts" figure down to line 10 as "gross profit." This statement the government claims was mate-

⁹⁸ Indeed, with the showing it could have made, the government might have been entitled to get to the jury in a tax evasion prosecution of Bromley. See *Black v. United States*, 122 U.S.App.D.C. 347, 353, 353 F.2d 885, 891 (1965).

rially false. In sustaining the legal theory back of this contention, the court erred.

First, the statement is not false. A lawyer's "gross profit" is necessarily the same as his "gross receipts", in distinction to a merchant, whose "cost of goods sold" figure reduces his gross receipts as shown on Schedule C. This distinction between a merchant and lawyer in reporting of receipts was set out by the Commissioner as long ago as 1922. *Mim.* 2915, I-1 *Cum. Bul.* 233 (1922).⁹⁹ Thus, it is verbal sleight of hand to charge that Bromley did not have "gross profit" of \$21,500, as he reported on his 1963 Schedule C.

Moreover, if Bromley's statement that he had \$21,500 in gross profit is misleading, the government made it so. Schedule C is a form prescribed by the IRS. Taxpayers are not required to keep diaries, only to fill out such forms and keep such records as the Secretary of the Treasury prescribes. 26 U.S.C. § 6001.

Thus, the government's only real contention is that Bromley *did not receive* the funds in question. But this contention is belied by the record, since he testified that he received each of the checks and cashed them, turning the proceeds over to Baker. Clearly it was proper for Baker and for him to think he had "received" the money he handled in that manner, although he would not have to pay tax on it. *Cf. Mark D. Eagleton*, 35 BTA 551, 562 (1937).¹⁰⁰

The government's second claim is that Bromley was not entitled to deduct, as "legal and professional fees", the money he paid over to Baker. The government will presumably concede that Bromley, having reported receipt of the funds on line 1 of Schedule C, could properly take some

⁹⁹ This ruling by the Commissioner is still, after 45 years, the only guideline cited to lawyers and accountants researching the question. See 5 Prentice-Hall, *Federal Taxes*, Income Tax ¶35,055(5) (1967).

¹⁰⁰ The customary meaning of "receipts" supports this view. Webster's new International Dictionary, 2d ed., 1952, "receipt," meaning 3.

deduction for having paid it out to Baker. The government contends, however, that the choice of line 17 ("legal and professional fees") for reporting the deduction constituted a material false statement and that Baker's advising Bromley in the choice was a felony. But what line is more appropriate for reporting transmission of a fee from a lawyer who is nominally retained to another who is actually doing the work? Line 25, "other business expenses"? Perhaps, purely from the point of view of logic, there is something to be said for and against both lines. We submit that neither is so clearly designated by the law as to make it felonious to choose the other.

B. Insufficiency of the Evidence, in the Light of Appellant's Reliance on the Advice of Counsel.

Even assuming Bromley's return was materially untrue, the government did not make enough of a case to survive a motion for judgment of acquittal at the close of all the evidence, for a tax lawyer and a certified public accountant testified that they had advised Baker to tell Bromley to report the transactions as he did. They also counseled him to tell Bromley to file Forms 1099 showing payment of the money to Baker. Baker testified without contradiction that he followed this advice. The purpose of the advice, the experts testified, was to disclose the path of the funds from the payors to Bromley to Baker.

The government's only response to the experts was to barrage them with questions on whether Baker had told them the relevant facts. The experts testified he had given them all the facts they considered relevant and that none of the additional facts called to their attention by the government's cross-examination would have changed the advice they gave.

This evidence, which the government did not and could not contradict, demonstrates that, on all the evidence, appellant was entitled to a judgment of acquittal on Count 8, for his reliance on counsel negates the criminal intent

required for a conviction. See *United States v. Pechenik*, 236 F. 2d 844 (3d Cir. 1956); *Jett v. United States*, 352 F. 2d 179 (6th Cir.), *cert. denied*, 383 U.S. 935 (1965). Even if the experts were wrong on the law, appellant's good faith adoption of their advice precludes conviction. *Wardlaw v. United States*, 203 F. 2d 884 (5th Cir. 1953). As we shall next show, moreover, there was no way for the jury to find that the experts' legal view was wrong.

C. Failure To Instruct on the Law

As Count 8, as we have shown, states no offense, it was error to deny motions for judgment of acquittal. It was also error to deny appellant's Requested Instruction No. 25, JA 1325, which stated, in effect, that it was permissible to report as Bromley did.

But, assuming appellant's view of the law, as embodied in the instruction he sought, was wrong, what was the law? In denying the instruction, the court said it intended "to make a general statement of the law with reference to Count 8, and to follow that with the Defendant's defense theory on the basis of which the jury should acquit if they believe it." T. 3010. This promise, given after a wide-ranging discussion of the applicable law during the settlement of instructions, T. 2990-3010, was not kept. The jury was given a comparatively "boilerplate" charge on the statutory elements of Count 8: that it must find that Bromley's return was false as to a material matter, that appellant aided and assisted in the falsification, and that he did so wilfully. The jury was not even told what was alleged to have been false. No mention was made of the defense contention that Bromley's method of reporting was lawful. Worst of all, the court told the jury nothing about the law applicable to Bromley's method of reporting. The facts were essentially not in dispute and the central issue was one of law: whether the applicable requirements of tax law authorized this method of reporting, as appellant's tax experts declared, or forbade it, as the prosecution argued. The Court gave the jury no basis for making that deter-

mination.¹⁰¹ On the basis of the facts before it and the instructions of the court, the jury could as properly have convicted appellant of any other crime in the code as of the crime charged in Count 8. Such a conviction, of course, would have been based, like this conviction, neither on fact nor on law, but upon some underlying prejudice. This prejudicial failure to instruct as required and as promised is clear and reversible error. *Tatum v. United States*, 88 U.S. App. D.C. 386, 190 F. 2d 612 (1951).

VIII. THE COUNT 9 CONVICTION SHOULD BE REVERSED BECAUSE THE COURT ERRONEOUSLY REFUSED TO INSTRUCT THE JURY ON THE THEORY OF THE DEFENSE AND MISLED THE JURY AS TO THE LEGAL EFFECT OF NON-ACCOMPLISHMENT OF AN ALLEGED CONSPIRATORIAL OBJECTIVE

We respectfully submit that if this Court, as we have urged, reverses the conviction on Count 8, the Count 9 conviction cannot long survive. So closely related are the two counts that the erroneous instructions which produced the Count 8 conviction must have affected the jury's Count 9 determination as well. By properly instructing the jurors on the tax law, as there requested, the court would have withdrawn from their attention the alleged conspiracy to violate 26 U.S.C. § 7206(1), leaving them to consider only whether appellant had engaged in a conspiracy to defraud the United States and to understate his income.

Additional errors, moreover, independent of the Count 8 errors, require reversal on Count 9.

The court's instructions on Count 9 contained nothing but generalities. No aid was given the jury by way of analysis of the brain-breaking convolutions of the 18 pages of the count, or even by way of a marshalling of the opposing contentions. Certainly for this count, even more

¹⁰¹ The court's niggardly instructions, erroneous enough in an ordinary case, were especially erroneous here, for, in complex tax cases, the jury is entitled to more than a routine general charge. Here, as where the government proceeds with a complicated method of proof in a net worth or a bank deposit tax evasion case, the defendant is entitled to "a special explanatory charge." *Holland v. United States*, 348 U.S. 121, 129 (1954); *Greenberg v. United States*, 295 F.2d 903, 907 (1st Cir. 1961).

than for Count 8, a special explanatory charge was mandatory, if the jury was to assess whether the alleged agreement took place and whether it amounted to an agreement to cheat the United States. The jury had heard testimony concerning a meeting in Los Angeles among Bromley, Baker, and Jones; Baker telling Bromley not to talk to the FBI; Bromley and Baker meeting repeatedly for Bromley to turn over the proceeds of checks; and so on through the myriad details of the government's case-in-chief.¹⁰² Even one of the government's counsel, as late as the settlement of the instructions, was confused as to what the alleged illegal objects of the conspiracy were. He was under the erroneous impression that Count 9 charged a conspiracy not to talk to FBI agents, or one to mislead the Senate. JA 1222-24, 3071-72. Can we assume that the jury, surely less learned in the law than government counsel, understood the issues? Clearly the case cried for an explication of the conflicting theories. Even if not required unduly to limit the government to a specific theory of the case, the court was required, at least, to give the jury an idea of the focus of the controversy.

Not only were the instructions woefully inadequate to convey to the jury the central thrust of the alleged conspiracy, they misled the jury as to a salient feature of the government's case. Paragraph 6(b) of the indictment charged, in effect, an agreement that Bromley would pay income tax on some of Baker's income. The proofs indisputably show, however, that Bromley never paid taxes on Baker's income and that Baker did not under-report his income by a single penny. Thus, even assuming there was proof of this object of the conspiracy, the object was not achieved.

The court charged the jury that "The fact that the conspiracy was not carried out successfully, or even that it

¹⁰² Count 9, to which all of this evidence was supposedly relevant, illustrates the conspiracy law's tendency to "expand itself to the limit of its logic"—and beyond. Some effort to canalize the government's case was essential. *Krulewitch v. United States*, 336 U.S. 440, 445 (1949) (Mr. Justice Jackson, concurring).

was not carried out at all, is immaterial." JA 1228. A defendant may, of course, be guilty of conspiracy though the object of the conspiracy is not consummated. The jury may, however, consider the fact that the object was not accomplished as having some bearing, along with all other evidence, on the issue of whether the parties had ever undertaken to accomplish it. To tell the jury that it may not consider the fact is plainly erroneous.¹⁰³ Moreover, since it contradicted what defense counsel had just argued to the jury, JA 1229, the error was even more prejudicial. *United States v. Phillips*, 217 F. 2d 435, 440 (7th Cir. 1954). It was incumbent upon the court, when counsel immediately brought the error to its attention, JA 1229, to give the jury a clear and unequivocal correction. The court here insisted upon its error.

CONCLUSION

For the foregoing reasons, appellant respectfully prays that the judgment of conviction be reversed.

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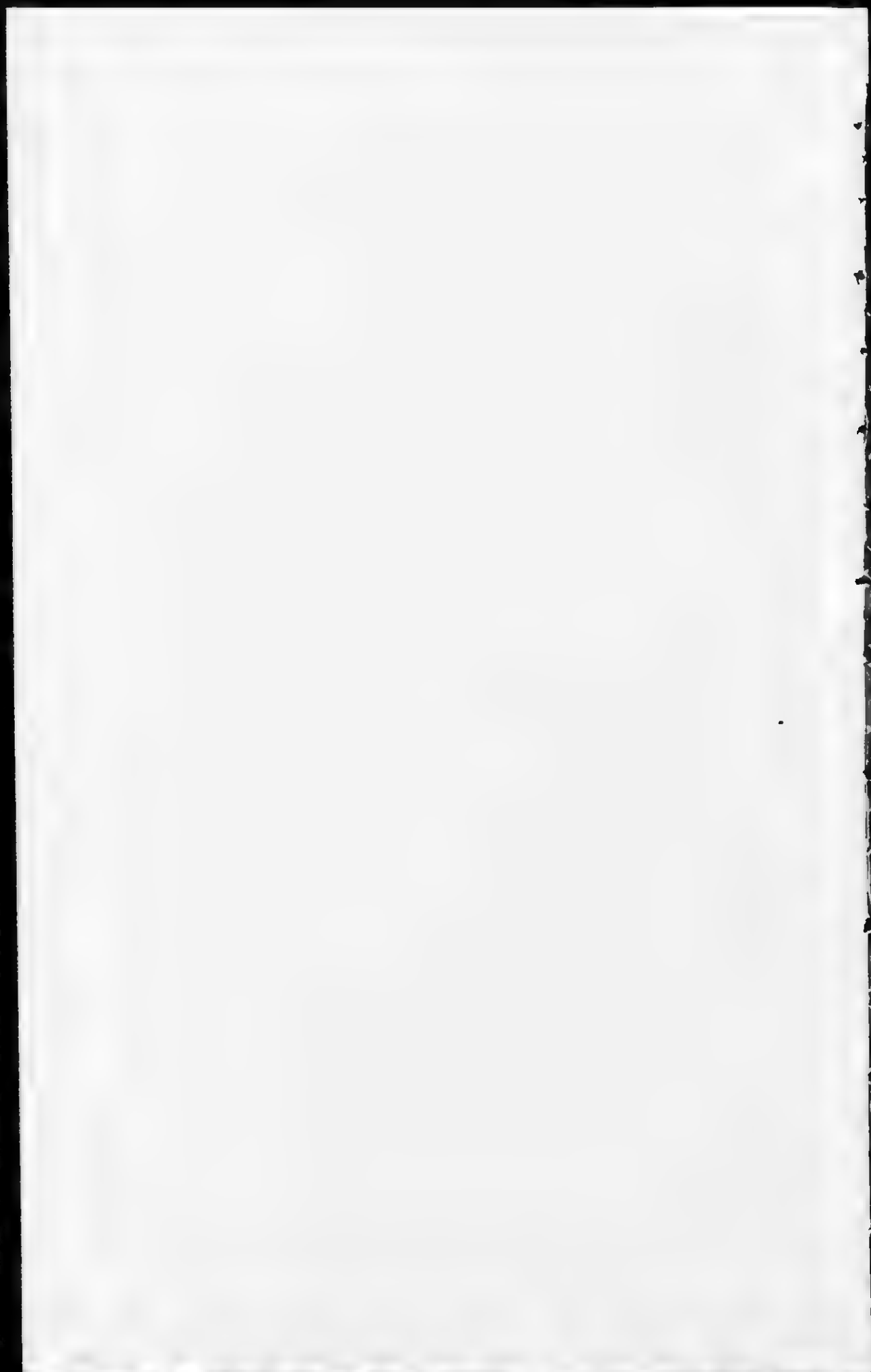
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¹⁰³ The situation here is just the reverse of that in the leading case of *Mutual Life Insurance Co. v. Hillmon*, 145 U.S. 285 (1892), in which the issue was whether one Walters, then deceased, had gone away from Wichita. Letters stating that he intended to do so were held admissible on the ground that his statements that he and Hillmon would go away "made it more probable both that he did go and that he went with Hillmon that if there had been no proof of such intention." *Id.* at 296. In *Hillmon*, the jury was to reason from the existence of a plan (the known fact) to the consummation of the plan (the unknown fact). In this case, by the same reasoning, it was proper for the jury to infer from the known fact that the alleged conspiracy was not consummated to the conclusion that there was no conspiracy in the first place.



APPENDIX A
Statutes Involved

UNITED STATES CONSTITUTION:

4th Amendment:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

5th Amendment:

“No person shall . . . deprived of life, liberty, or property, without due process of law. . . .”

6th Amendment:

“In all criminal prosecutions, the accused shall enjoy the right to . . . public trial, by an impartial jury of the State and district wherein the crime shall have been committed, . . . and to be informed of the nature and cause of the accusation, . . . and to have the Assistance of Counsel for his defense.”

UNITED STATES CODE:

18 U.S.C. § 371:

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

26 U.S.C. §§ 6001, 6653(b), 7201, 7206(1) and (2):

§ 6001. Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 6653. Failure to pay tax

(b) Fraud.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. In the case of income taxes and gift taxes, this amount shall be in lieu of any amount determined under subsection (a).

§ 7201. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the cost of prosecution.

§ 7206. Fraud and false statements

Any person who—

(1) Declaration under penalties of perjury.—Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) Aid or assistance.—Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document;

28 U.S.C. §§ 1861, 1862, 1863, 1866, 1867:

§ 1861. Qualifications of Federal jurors

Any citizen of the United States who has attained the age of twenty-one years and who has resided for a period of one year within the judicial district, is competent to serve as grand or petit juror unless—

(1) He has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

(2) He is unable to read, write, speak, and understand the English language.

(3) He is incapable, by reason of mental or physical infirmities to render efficient jury service.

§ 1862. Exemptions

The following persons shall be exempt from jury service:

(1) Members in active service in the armed forces of the United States.

(2) Members of the Fire or Police departments of any State, District, Territory, Possession or subdivision thereof.

(3) Public officers in the executive, legislative or judicial branches of the government of the United States, or any State, District, Territory, or Possession or subdivision thereof who are actively engaged in the performance of official duties.

§ 1863. Exclusion or excuse from service

(a) A district judge for good cause may excuse or exclude from jury service any person called as a juror.

(b) Any class or group of persons may, for the public interest, be excluded from the jury panel or excused from service as jurors by order of the district judge based on a finding that such jury service would entail undue hardship, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice.

(c) No citizen shall be excluded from service as grand or petit juror in any part of the United States on account of race or color.

§ 1866. Special petit juries; talesmen from bystanders

(a) Whenever sufficient petit jurors are not available, the court may require the United States marshal to summon a sufficient number of talesman from the bystanders.

(b) When a special jury is ordered by a district court, it shall be returned by the marshal in the same manner and form as is required in such case by the law of the State in which such district court sits. As amended May 24, 1949,

c. 139, § 96, 63 Stat. 103.

§ 1867. Summoning jurors

When the court orders a grand or petit jury to be drawn the clerk shall issue summons for the required number of jurors and deliver them to the marshal for service.

Each person drawn for jury service may be served personally or by registered or certified mail addressed to such person at his usual residence or business address.

Such service shall be made by the marshal who shall attach to his return the addressee's receipt for the registered or certified summons, where service is made by mail.

D. C. CODE:

§ 11-2301. Qualifications of jurors

(a) Any citizen of the United States who has attained the age of 21 years and who has resided for a period of one year within the District of Columbia is competent to serve as a grand or petit juror in courts of the District unless he:

(1) has been convicted in a State, territorial, or federal court of record, or court of the District, of a crime punishable by imprisonment for more than one year, and his civil rights have not been restored by pardon or amnesty;

(2) is unable to read, write, speak and understand the English language; or

(3) is incapable by reason of mental or physical infirmities to render efficient jury service.

(b) An otherwise qualified person is not disqualified from jury service by reason of sex, but a woman may not be compelled so to serve.

§ 11-2302. Exemptions

The following persons are exempt from jury service:

(1) members in active service in the armed forces of the United States;

(2) members of the fire and police departments of the United States and of the District of Columbia;

(3) public officers in the executive, legislative, or judicial branch of the Government of the United States or the Government of the District of Columbia who are actively engaged in the performance of official duties;

(4) attorneys-at-law in active practice;

(5) ministers of the gospel and clergymen of every denomination;

(6) physicians and surgeons in active practice;

(7) keepers of charitable institutions created by or under the laws relating to the District of Columbia; and

(8) persons employed on vessels navigating the waters of the District of Columbia.

All other persons, otherwise qualified according to law, whether employed in the service of the Government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired, all officers and enlisted men in the reserve components of the armed forces of the United States, all notaries public, all postmasters, and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, are qualified to serve as jurors in the District of Columbia and are not exempt from jury service.

§ 11-2305. Selection of jurors

The jury commission shall select the jurors and commissioners specified by section 11-2304, as nearly as may be, from intelligent and upright residents of the District.

§ 11-2306. Manner of drawing

(a) Grand and Petit Jurors for District Court. At least ten days before the commencement of each term of the United States District Court for the District of Columbia, at which jury trials are to be had, the jury commission shall:

(1) publicly break the seal of the jury box and draw therefrom, by lot and without previous examination, the names of such number of persons as the court directs to serve as grand and petit jurors in the court; and

(2) forthwith certify to the clerk of the court the names of the persons so drawn as jurors.

If the United States attorney for the District of Columbia certifies in writing to the chief judge of the District Court, or, in his absence, to the presiding judge, that the exigencies of the public service require it, the judge may, in his discretion, order an additional grand jury summoned, which shall be drawn at such time as he designates. Unless sooner discharged by order of the chief judge, or, in his absence, the presiding judge, the additional grand jury shall serve until the end of the term in and for which it is drawn.

§ 11-2307. Substitution in case of vacancies

When a person whose name is drawn from the jury box is dead or has removed from the District before being selected, or removes therefrom after being selected, or becomes otherwise disqualified or disabled, the jury commission shall destroy the slip containing his name, and shall draw from the box the name of another person to serve in his stead.

§ 11-2309. Filling vacancies ; deficiencies in panel

When persons drawn as grand or petit jurors cannot be found, or prove to be incompetent, or are excused from service by the court for which their names were drawn, the jury commission under the order of the court, shall draw from the box the names of other persons to take their places, and if, after the organization of the jury, vacancies occur therein, the commission shall fill them in like manner.

§ 22-2201. Grand larceny

Whoever shall feloniously take and carry away anything of value of the amount or value of \$100 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years.

§ 22-2203. Larceny after trust

If any person entrusted with the possession of anything of value, including things savoring of the realty, for the purpose of applying the same for the use and benefit of the owner or person, so delivering it, shall fraudulently convert the same to his own use he shall, where the value of the thing so converted is \$100 or more, be punished by imprisonment for not less than one year nor more than ten years, or by a fine of not more than \$1,000, or both; and where the value of the thing so converted is less than \$100 he shall be punished by imprisonment for not more than one year or by a fine of not more than \$500 or both: *Provided*. That nothing contained in this section shall be construed to alter or repeal any section contained in this chapter.

FEDERAL RULES OF CRIMINAL PROCEDURE:

Rule 8.

JOINDER OF OFFENSES AND OF DEFENDANTS

(a) Joinder of Offenses. Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 14.

RELIEF FROM PREJUDICIAL JOINDER

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection *in camera* any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

Rule 41.

(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decisions of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

Rule 43.

PRESENCE OF THE DEFENDANT

The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules. In prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the

written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence. The defendant's presence is not required at a reduction of sentence under Rule 35.

**Rules of the United States District Court
for the District of Columbia:**

RULE 2. Continuous sessions of court; Rule Day

(a) Continuous Sessions of Court. The court shall be in continuous session for transacting judicial business on all business days throughout the year.

RULE 18. Jurors; Assignment

Petit jurors shall be assigned to a single jury pool and reassigned for service among the divisions of the Court upon the requisition of each trial judge.

APPENDIX C

Excerpts From Transcript of Proceedings Before
Honorable Oliver Gasch, January 4, 1967:

pp. 10-11:

Mr. Kilmer: I am in the—

The Court: —the jury that we are trying to select in this case.

Mr. Kilmer: —branch of Administrative Proceedings and Investigations, in the Division of Corporation Finance.

The Deputy Marshal: 76, Allen S. Kilmer, has a letter.

The Court: Mr. Kilmer, could you tell me a little more about your work? You are the type of person that we would like very much to be able to depend on in selecting—

pp. 21-23:

The Deputy Marshal: Number 15, Marian L. O'Connell.

The Court: Mrs. O'Connell, we would like very much to have jurors of your type serve but I recognize, however, the force of the recommendations of the Treasury Department.

Since one of the cases that possibly this panel will be called upon to sit on involves tax matters, I rather imagine that counsel would have some reservations about someone as close to tax matters as you serving on the jury, so I will excuse you.

Mrs. O'Connell: Thank you.

The Deputy Marshal: 151, Cornelia M. Ball.

Miss Ball: I would like to serve, but I worked on a newspaper until very recently and with my understanding of a case coming up, I won't be eligible and I am in a new job which I am trying to set up and it is kind of a hard time to leave.

The Court: You would be able to write a book perhaps if you serve on a jury.

Miss Ball: But when I served before I have always had this problem, that no one wants we because I come with

prior knowledge. As I say, we are in a tight spot because I am trying to set up a new office at the Planning Commission.

The Court: What type of writing do you do?

Miss Ball: Well, I was on the News when I was covering—on the City Desk, also working on the desk and reporting. I covered most everything.

The Court: With what organization are you connected now?

Miss Ball: National Capitol Planning Commission.

The Court: I see.

Miss Ball: I have only been there a few months.

The Court: It strikes me that you are the type of juror we would like very much to have.

Miss Ball: Oh, I would like to serve, if you think I will be accepted.

The Court: Well, we would be very happy to have you at least seek to get on a panel.

Miss Ball: Fine.

p. 33:

The Court: What is your office?

Miss Dignan: I work for Mr. Fred Haas of John I Haas, Inc. We are dealers in hops and he is our president. He will be out of town next week but I do sort of need to arrange a number of things this week before I could be excused.

The Court: Do you think that you could make the appropriate arrangements this week? This panel will not be called into service until next Monday.

p. 34:

Miss Dignan: I just wanted to be excused for several days so that I could get my work out.

The Court: We wouldn't need your service until next Monday at the earliest.

pp. 38-50:

The Court: Would you come to the Bench please, Mr. Kilmer?

(Whereupon Mr. Kilmer approached the Bench and the following occurred:)

The Court: You are very much the type of man I would like to see serve on this jury. One of the cases set that will be first brought to the attention of this panel will be the Baker case.

Mr. Kilmer: Is Boris Kostelanetz connected with it?

The Court: He is a counsel.

Mr. Kilmer: He would not permit me to serve. He was defense counsel on a case that lasted over one year in New York.

The Court: He is an old acquaintance of yours?

Mr. Kilmer: Very much so.

The Court: I think under the circumstances then we will have to excuse you.

Mr. Kilmer: And I also know Edward Bennett Williams from SEC matters.

The Court: He wouldn't want you to serve?

Mr. Kilmer: I don't think so.

The Court: Unfortunately, I can't persuade either of them to change their opinions, but I still have the view that it would be well to have people of your standing on juries.

Mr. Kilmer: I have cases I should have been in New York for during the last three weeks but I couldn't get away and now I have to call the U. S. Attorney up there after this to tell him when I can get there.

(Mr. Kilmer left the Bench.)

(In Open Court)

The Deputy Clerk: Mr. Chin, Mr. Edmond Chin, will you step forward, please?

The Court: Mr. Chin, will you come to the Bench, please?

(Whereupon Mr. Chin approached the Bench and the following occurred:)

The Court: Mr. Chin, we are trying to get a very representative jury for this particular case. It is going to be an extremely interesting one and I think it is one that you would remember the rest of your life.

pp. 52-52:

The Court: Mr. Russell, come to the Bench, please.

(Whereupon Mr. Russell approached the Bench and the following proceedings were held:)

The Court: Who are your employers?

Mr. Russell: Sulzer Laboratories of Tracor.

The Court: Would you spell that?

Mr. Russell: T-r-a-c-o-r.

The Court: What is your work?

Mr. Russell: Electronic mechanic.

The Court: Is there anyone out there who can do your work in your absence?

Mr. Russell: I suppose so, but most of my work is building special equipment and things that the engineers design, prototypes.

The Court: You see there is a special case that will be submitted to a jury drawn from this panel and others perhaps, the Baker case.

Do you know anything about the Baker case?

Mr. Russell: Not too much.

The Court: It is a case involving income tax, some theft counts, some conspiracy. It involves Bobby Baker, Secretary of the Majority, on Capitol Hill. It should be a very interesting case.

However, I think service on the Baker case will be somewhat protracted, a minimum of a month, maybe six weeks.

Mr. Russell: I see.

The Court: Of course we will go into these things in greater detail when the panel is actually selected. It will

be a panel of twelve jurors, and six alternates will be selected, primarily from this group.

pp. 53-57:

The Court: Miss Ball:

The Deputy Clerk: Miss Cornelia Ball.

The Court: Would you come to the Bench, please.

(Whereupon Miss Ball approached the Bench and the following proceedings were held:)

The Court: As I said to you earlier, I think that this is the kind of case that you would always remember serving on.

Miss Ball: I think that is very true.

The Court: In my experience agencies of the Government are willing to recognize the fact that this is important. Jury duty must be done by representative citizens of the community.

Now let me ask you this question: The case I have in mind, of course, is the Baker case.

Miss Ball: Yes, I know that.

The Court: Do you have any preconceived notion of that case based on what you have read about it? Of course, newspaper people usually—

Miss Ball: I helped work on coverage of it.

The Court: Yes.

Miss Ball: That is why I said that. There is more involved than just simply reading about it.

The Court: To what extent?

Miss Ball: You know there is one reporter—mainly editing copy and that sort of thing.

The Court: You did edit copy on this case, hearings before the Senate Committee?

Miss Ball: On the original investigation that the newspapers did on it.

The Court: It would be rather difficult to express the view that you had no preconceived notion about it?

Miss Ball: It honestly would. I would have to be honest about this.

The Court: Of course.

Miss Ball: Because I am aware of the stories that didn't get printed, that sort of thing.

The Court: I think in view of that I should excuse you.

Miss Ball: Give me another year and I will have been away from the newspaper long enough. I served once before and I couldn't get on anything because everything that came up I was involved with some way or other.

The Court: With reluctance I excuse you.

Miss Ball: Give me another year and then I will have been away from the newspaper long enough.

(Miss Ball left the Bench.)

(In Open Court)

The Court: Mrs. Fulton, would you mind coming to the Bench, please?

(Whereupon Mrs. Fulton approached the Bench and the following proceedings were held:)

The Court: Mrs. Fulton, the case that we have in mind is the Baker case.

Mrs. Fulton: What?

The Court: The Baker case, on the Secretary to the Senate Majority. What is the nature of your work?

Mrs. Fulton: I am a secretary.

The Court: Have you had any interest in that case specially?

Mrs. Fulton: Not particularly.

The Court: Have you formed any, shall we say, impressions of his guilt or innocence, or do you feel that you could try the issues in that case, which involve income tax matters, theft counts, and conspiracy, solely on the basis of what you heard in court?

Mrs. Fulton: I am sure I could, Your Honor.

The Court: Would you be interested in serving in the case if you were selected?

Mrs. Fulton: I served before. This is the second time. I have served before.

The Court: This would be a somewhat protracted case, and perhaps last as much as six weeks, but I would think that after the case is over, you wouldn't be bothered again for some years.

Mrs. Fulton: Well, I was all set to go, cleaned my desk out and was all ready when they called me in at five o'clock and said I hadn't better go.

The Court: I could talk to Mr. Long about it.

Mrs. Fulton: He is our new chief.

The Court: I think he would recognize the importance of having representative citizens on the panel.

p. 58:

Mrs. McConkey: Sales work. I work at Morton's on Pennsylvania Avenue. I like my work and my only income is my job.

The Court: You think if you were required to serve, say, for six weeks, it might prejudice you in your job?

pp. 60-61:

Miss Dignan: Mr. Haas is leaving Friday for a couple of weeks so that would work out pretty well. I work for him and so while he is gone I would do it. Would it be very long, do you think?

The Court: I would say about six weeks. That is the Baker case.

Miss Dignan: Oh, Bobby Baker.

The Court: It should be a very interesting case. Let me ask you this question. I just excused a newspaper woman who had done some work on a paper, because she had formed an opinion about it.

I will certainly ask all members of the panel next Monday whether they have formed any opinions about the case,

about his guilt or innocence. Have you formed any opinion?

Miss Dignan: Not too much. I am from Montana and I haven't paid much attention to it. My father is a lawyer and my uncle—

The Court: You are the kind of person we want to have on jury panels.

Well, if you will come back next Monday—

Miss Dignan: Thank you.



JOINT APPENDIX

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21154

ROBERT G. BAKER, *Appellant*

v.

UNITED STATES OF AMERICA

Appeal From Judgment of the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 11 1968

Volume I
(Pages 1 to 387)

Nathan J. Paulson
CLERK



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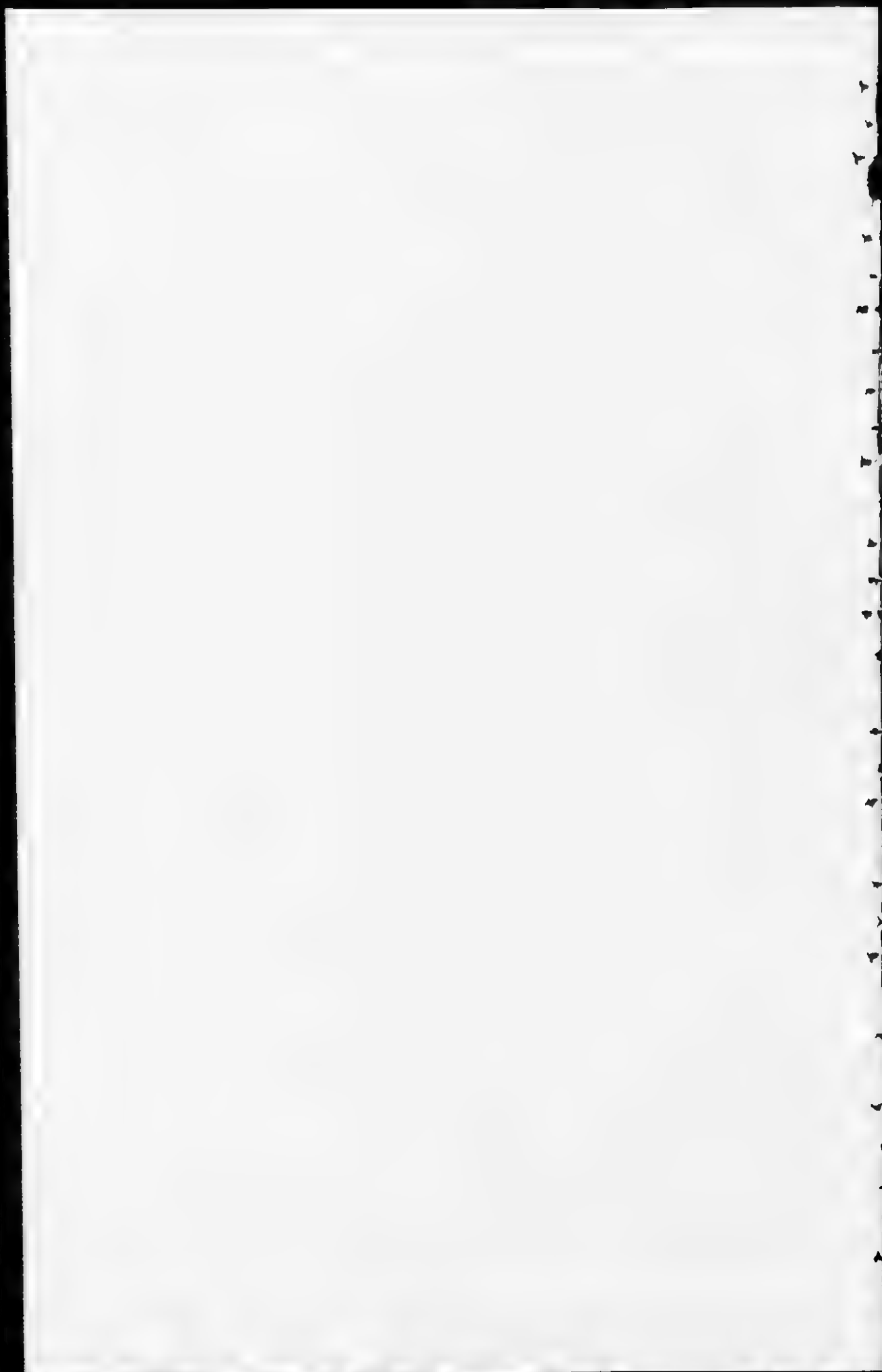
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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21154

ROBERT G. BAKER, *Appellant*

v.

UNITED STATES OF AMERICA

Appeal From Judgment of the United States District Court
for the District of Columbia

JOINT APPENDIX

Indictment

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on September 1, 1964

THE UNITED STATES OF AMERICA

v.

ROBERT G. BAKER

Criminal No. 39-66

Grand Jury Original

Violations:

Attempt to Evade and Defeat Tax (26 U.S.C. § 7201, Two Counts);
Grand Larceny (22 D. C. Code § 2201, Two Counts);
Larceny After Trust (22 D. C. Code § 2203, Two Counts);
Transportation of Stolen Moneys (18 U.S.C. § 2314);
Fraud and False Statements (26 U.S.C. § 7206(2));
Conspiracy (18 U.S.C. § 371).

THE GRAND JURY CHARGES:

COUNT ONE

On or about June 18, 1962, in the District of Columbia, Robert G. Baker, late of Washington, D. C., who during the calendar year 1961 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1961, by preparing, signing, and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Maryland, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their taxable income for said calendar

year was the sum of \$2,354.78 and that the amount of tax due and owing thereon was the sum of \$461.76, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the sum of \$7,243.49, upon which said taxable income there was owing to the United States of America an income tax of \$1,504.37.

In violation of Section 7201, Internal Revenue Code; Title 26, United States Code, Section 7201.

COUNT TWO

On or about April 15, 1963, in the District of Columbia, Robert G. Baker, late of Washington, D. C., who during the calendar year 1962 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1962, by preparing, signing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Maryland, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their taxable income for said calendar year was the sum of \$14,641.41 and that the amount of tax due and owing thereon was the sum of no dollars, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the sum of \$64,311.61, upon which said taxable income there was owing to the United States of America an income tax of \$22,048.36.

In violation of Section 7201, Internal Revenue Code; Title 26, United States Code, Section 7201.

COUNT THREE

1. On or about October 21, 1962, within the District of Columbia, defendant Robert G. Baker did unlawfully, feloniously and wilfully steal, take and carry away the property of Stuart Davis, the said property consisting of approximately \$50,000 in money.

2. A substantial part of the \$50,000 referred to in Paragraph 1 of this Count was not reported on the income tax return of Robert G. Baker and his wife for 1962, which return is referred to in Count Two of this Indictment.

In violation of Title 22, District of Columbia Code, Section 2201.

COUNT FOUR

1. On or about October 21, 1962, within the District of Columbia, defendant Robert G. Baker fraudulently converted to his own use approximately \$50,000 in money, of the money and property of Stuart Davis, which had been entrusted to Robert G. Baker by Stuart Davis for the purpose of applying it for the use and benefit of Stuart Davis and other persons, said other persons not including Robert G. Baker.

2. A substantial part of the \$50,000 referred to in Paragraph 1 of this Count was not reported on the income tax return of Robert G. Baker and his wife for 1962, which return is referred to in Count Two of this Indictment.

In violation of Title 22, District of Columbia Code, Section 2203.

COUNT FIVE

1. On or about October 31, 1962, within the District of Columbia, defendant Robert G. Baker did unlawfully, feloniously and wilfully steal, take and carry away the property of John F. Marten, the said property consisting of approximately \$17,000 in money.

2. A substantial part of the \$17,000 referred to in Paragraph 1 of this Count was not reported on the income tax return of Robert G. Baker and his wife for 1962, which return is referred to in Count Two of this Indictment.

In violation of Title 22, District of Columbia Code, Section 2201.

COUNT SIX

1. On or about October 31, 1962, within the District of Columbia, defendant Robert G. Baker fraudulently converted to his own use approximately \$17,000 in money, of the money and property of John F. Marten, which had been entrusted to Robert G. Baker by John F. Marten for the purpose of applying it for the use and benefit of John F. Marten and other persons, said other persons not including Robert G. Baker.

2. A substantial part of the \$17,000 referred to in Paragraph 1 of this Count was not reported on the income tax return of Robert G. Baker and his wife for 1962, which return is referred to in Count Two of this Indictment.

In violation of Title 22, District of Columbia Code, Section 2203.

COUNT SEVEN

1. On or about November 9, 1962, defendant Robert G. Baker did transport from Los Angeles, California to Washington, District of Columbia, the property of Sidney M. Taper, the said property consisting of approximately \$33,000 in money which had been taken by the said Robert G. Baker by fraud, and the said Robert G. Baker then knew the said property to have been taken by fraud.

A substantial part of the \$33,000 referred to in Paragraph 1 of this Count was not reported on the income tax return of Robert G. Baker and his wife for 1962, which return is referred to in Count Two of this Indictment.

In violation of Title 18, United States Code, Section 2314.

COUNT EIGHT

1. At all times mentioned in this Indictment:

(a) Robert G. Baker was an attorney at law, residing in Washington, District of Columbia.

(b) Wayne L. Bromley was an attorney at law, residing in Bethesda, Maryland, and Jacqueline Bromley was his wife.

(c) First Western Financial Corporation was a corporation located and doing business in Las Vegas, Nevada, and in other places.

(d) United States Freight Company was a corporation located and doing business in New York City, New York, and in other places.

(e) International Marketing Associates, Inc., was a corporation located and doing business in Los Altos, California, and Palo Alto Hills, California, and in other places.

2. On or about December 30, 1964, Wayne L. and Jacqueline Bromley signed and caused to be mailed to the District Director of Internal Revenue for the Internal Revenue District of Maryland at Baltimore, Maryland, the U. S. Individual Income Tax Return for 1963 of Wayne L. and Jacqueline Bromley. (This Tax Return will be referred to as "The 1963 Bromley Return" throughout the remainder of this Count. The District Director of Internal Revenue mentioned in this paragraph will be referred to as "The District Director" throughout the remainder of this Count.)

3. On or about January 4, 1965, The District Director received and filed The 1963 Bromley Return.

4. The 1963 Bromley Return contained a Schedule C which represented that Wayne L. and Jacqueline Bromley had gross profit from business or profession aggregating \$21,300 (the components of which figure were not itemized) and that Wayne L. and Jacqueline Bromley were entitled under the Internal Revenue laws to claim a business deduction of \$11,000 for legal and professional fees. The unitemized \$21,300 gross profit so reported in the

Schedule C to The 1963 Bromley Return included, among others, the following items:

- (1) \$8,000 from First Western Financial Corporation, and
- (2) \$2,500 from United States Freight Company, and
- (3) \$500 from International Marketing Associates, Inc.

At the time the defendant Robert G. Baker did the acts set forth and charged in Paragraph 5 of this Count, he well knew and believed that the \$21,300 gross profit reported in the Schedule C to The 1963 Bromley Return would and did include the three items set forth in this Paragraph 4, and he further well knew and believed that the said Schedule C would and did claim the aforesaid \$11,000 deduction.

5. Commencing on or about December 27, 1964, and continuing to on or about January 4, 1965, in the District of Columbia, the defendant Robert G. Baker wilfully and knowingly aided, assisted in, counseled, procured, and advised the preparation and presentation to The District Director of The 1963 Bromley Return which was false and fraudulent as to material matters in that:

(a) The Schedule C to The 1963 Bromley Return represented that Wayne L. and Jacqueline Bromley were entitled under the Internal Revenue Laws to claim a business deduction of \$11,000 for legal and professional fees, whereas, as the defendant Robert G. Baker then and there well knew:

(1) Wayne L. and Jacqueline Bromley had not expended \$11,000 for legal and professional fees during 1963 and were not entitled to a business deduction of \$11,000 for legal and professional fees; and

(2) Wayne L. and Jacqueline Bromley had not expended any money for legal and professional fees during 1963; and

(b) The Schedule C to The 1963 Bromley Return represented that Wayne L. and Jacqueline Bromley had gross profit from business or profession of \$21,300, whereas, as the defendant Robert G. Baker then and there well knew:

(1) Wayne L. and Jacqueline Bromley did not have gross profit from business or profession during 1963 of \$21,300; and

(2) Of the said \$21,300 (which was reported as gross profit on the Schedule C to The 1963 Bromley Return) about \$13,000 was, in truth and in fact, profit and income of the defendant Robert G. Baker and not of Wayne L. and Jacqueline Bromley; and

(3) Wayne L. and Jacqueline Bromley did not have gross profit of \$8,000 during the calendar year 1963 from First Western Financial Corporation; and

(4) Wayne L. and Jacqueline Bromley did not have any gross profit from First Western Financial Corporation during the calendar year 1963; and

(5) The said \$8,000 from First Western Financial Corporation (which was included in the \$21,300 in gross profit reported on the Schedule C to The 1963 Bromley Return) was, in truth and in fact, profit and income of the defendant Robert G. Baker and not of Wayne L. and Jacqueline Bromley; and

(6) Wayne L. and Jacqueline Bromley did not have gross profit of \$2,500 during the calendar year 1963 from United States Freight Company; and

(7) Wayne L. and Jacqueline Bromley did not have any gross profit from the United States Freight Company during the calendar year 1963; and

(8) The said \$2,500 from the United States Freight Company (which was included in the \$21,300 in gross profit reported on the Schedule C to The 1963 Bromley Return) was, in truth and in fact, profit and income

of the defendant Robert G. Baker and not of Wayne L. and Jacqueline Bromley; and

(9) Wayne L. and Jacqueline Bromley did not have gross profit of \$500 during the calendar year 1963 from International Marketing Associates, Inc.; and

(10) Wayne L. and Jacqueline Bromley did not have any gross profit from International Marketing Associates, Inc., during the calendar year 1963.

In violation of Section 7206(2), Internal Revenue Code; Title 26, United States Code, Section 7206(2).

COUNT NINE

1. Paragraph 1 of Count Eight of this Indictment is incorporated by reference and re-alleged as Paragraph 1 of this Count Nine.

2. At all times mentioned in this Indictment:

(a) Clifford Jones was an attorney at law residing in Las Vegas, Nevada, and was an officer and director of First Western Financial Corporation.

(b) Subsequent to January 4, 1963, the Redwood National Bank was a National Banking Association located and doing business in San Rafael, California, and in other places.

(c) Harvey Aluminum (Incorporated) and Harvey Aluminum Sales, Inc. were corporations located and doing business in Torrance, California, and in other places.

3. Robert G. Baker is named in this Count as a conspirator and defendant. Clifford Jones and Wayne L. Bromley are named in this Count as conspirators, but not as defendants. (When the phrase "The Conspirators" is used in the remainder of this Count it refers to all three conspirators, jointly.)

4. Throughout the remainder of this Count, the Federal income tax returns of Wayne L. Bromley for the years 1963

and 1964 will be referred to as, respectively, "The 1963 Bromley Return" and "The 1964 Bromley Return."

5. Throughout the remainder of this Count, the Federal income tax returns of defendant Robert G. Baker for the years 1963 and 1964 will be referred to as, respectively, "The 1963 Baker Return" and "The 1964 Baker Return."

6. From on or about August 27, 1962, and continuing to on or about October 18, 1965 (the exact dates being to the Grand Jury unknown) in the District of Columbia and in other places, the defendant Robert G. Baker, and Clifford Jones, and Wayne L. Bromley, unlawfully, wilfully, and knowingly combined, conspired, confederated and agreed together and with each other:

(a) To defraud the United States in the exercise of its governmental functions and its right of (i) ascertaining, computing, levying, assessing, and collecting income taxes due and owing the United States by Robert G. Baker and Wayne L. Bromley for the calendar years 1963 and 1964 and (ii) investigating, detecting, and prosecuting violations of the Internal Revenue and other laws of the United States, by concealing from, continuing to conceal from, misrepresenting to, and continuing to misrepresent to, officers, employees, and agencies of the United States, the following:

(1) The nature of the business activities and relationships among The Conspirators during 1963 and 1964; and

(2) The existence, sources and nature of large parts of the income of Robert G. Baker during 1963 and 1964; and

(3) The true amounts of the gross profits and income from business or profession of Wayne L. Bromley during 1963 and 1964; and

(4) The true amounts of the legal and professional fees incurred and paid by Wayne L. Bromley during 1963 and 1964; and

(b) To violate Section 7206(1) of the Internal Revenue Code, Title 26, United States Code, Section 7206(1); that is, they conspired wilfully to make and subscribe, and cause to be made and subscribed, income tax returns containing, and verified by, written declarations that they were made under the penalties of perjury (to wit: The 1963 and 1964 Bromley Returns and The 1963 and 1964 Baker Returns) which The Conspirators would not and did not believe to be true and correct as to material particulars, in that:

(1) The 1963 and 1964 Bromley Returns would falsely and perjurally report as part of the gross profit and income from the business or profession of Wayne L. Bromley, the sums of money which were, in truth and in fact, profits and income of Robert G. Baker and not of Wayne L. Bromley (these falsely reported sums of money are referred to hereafter as "The Bromley Overstatement"); and

(2) The 1963 and 1964 Bromley Returns would falsely and perjurally claim wholly fictitious business deductions in amounts sufficient to offset a substantial part of The Bromley Overstatement; and

(3) The 1963 and 1964 Baker Returns would falsely and perjurally understate the gross profit and income from the business or profession of Robert G. Baker in an amount equal to a substantial part of The Bromley Overstatement.

7. It was a part of the said conspiracy:

(a) That Wayne L. Bromley would cause a representative of the Redwood National Bank to issue a check during the year 1963 payable to Wayne L. Bromley in the amount of \$5,000; and

(b) That Robert G. Baker and Wayne L. Bromley would cause said check to be cashed, and that Robert G.

Baker would then secretly and surreptitiously receive one-half of the cash proceeds of said check, to wit: \$2,500 in cash; and

(c) That Wayne L. Bromley would report as his own income, on The 1963 Bromley Return, the said \$2,500 payment; and

(d) That Robert G. Baker would not report as his own income, on The 1963 Baker Return, the said \$2,500 payment; and

(e) That Robert G. Baker would secretly and surreptitiously cause the payment to Wayne L. Bromley of such a sum of money as might be required to reimburse Wayne L. Bromley for the taxes paid by Wayne L. Bromley on account of the said \$2,500 reported as his own income by Wayne L. Bromley on The 1963 Bromley Return.

8. It was further a part of the said conspiracy:

(a) That The Conspirators would cause First Western Financial Corporation to issue eight checks during the year 1963 for an aggregate total of \$8,000 and four checks during the year 1964 for an aggregate total of \$6,000, all such checks being made payable to Wayne L. Bromley; and

(b) That The Conspirators would cause entries to be made in the books and records of First Western Financial Corporation falsely reflecting that each of the said checks represented payment of legal fees to Wayne L. Bromley by First Western Financial Corporation; and

(c) That Robert G. Baker would cause each of said checks to be endorsed with the name "Wayne L. Bromley," would cause each of said checks to be cashed, and would secretly and surreptitiously receive the cash proceeds of said checks; and

(d) That Wayne L. Bromley would not perform any services of any nature on behalf of First Western Financial Corporation; and

(e) That Wayne L. Bromley would falsely report as his own income, on The 1963 Bromley Return, the \$8,000 proceeds of the eight checks received in 1963 from First Western Financial Corporation; and

(f) That Wayne L. Bromley would falsely report as his own income, on The 1964 Bromley Return, the \$6,000 proceeds of the four checks received in 1964 from First Western Financial Corporation.

9. It was further a part of the conspiracy:

(a) That Robert G. Baker and Wayne L. Bromley would cause the United States Freight Company to issue five checks during the year 1963, and ten checks during the year 1964, payable to Wayne L. Bromley in the amount of \$500 each; and

(b) That Robert G. Baker and Wayne L. Bromley would cause entries to be made in the books and records of United States Freight Company falsely reflecting that each of the said checks represented payment of legal fees to Wayne L. Bromley by United States Freight Company; and

(c) That Robert G. Baker would cause each of said checks to be endorsed with the name "Wayne L. Bromley," would cause each of said checks to be cashed, and would secretly and surreptitiously receive the cash proceeds of said checks; and

(d) That Wayne L. Bromley would not perform any services of any nature on behalf of the United States Freight Company; and

(e) That Wayne L. Bromley would falsely report as his own income, on The 1963 Bromley Return, the \$2,500 proceeds of the five checks received in 1963 from the United States Freight Company; and

(f) That Wayne L. Bromley would falsely report as his own income, on The 1964 Bromley Return, the \$5,000 pro-

ceeds of the ten checks received in 1964 from the United States Freight Company.

10. It was further a part of the conspiracy:

(a) That Robert G. Baker would cause International Marketing Associates, Inc. to issue a series of checks during the year 1963 payable to Wayne L. Bromley in the amount of \$500 each; and

(b) That Robert G. Baker would cause entries to be made in the books and records of International Marketing Associates, Inc. falsely reflecting that each of the said checks represented payment of legal fees to Wayne L. Bromley by the International Marketing Associates, Inc.; and

(c) That Robert G. Baker would cause each of said checks to be endorsed with the name "Wayne L. Bromley," would cause each of said checks to be cashed, and would secretly and surreptitiously receive the cash proceeds of said checks; and

(d) That Wayne L. Bromley would not perform any services of any nature on behalf of International Marketing Associates, Inc.; and

(e) That Wayne L. Bromley would falsely report as his own income, on The 1963 Bromley Return, the entire proceeds of the said series of checks received in 1963 from the International Marketing Associates, Inc.

11. It was further a part of the conspiracy:

(a) That Robert G. Baker and Wayne L. Bromley would cause Harvey Aluminum (Incorporated) and Harvey Aluminum Sales, Inc. to issue ten checks during the year 1964 payable to Wayne L. Bromley in the amount of \$1,000 each; and

(b) That Robert G. Baker and Wayne L. Bromley would cause entries to be made in the books and records of Harvey

Aluminum (Incorporated) and Harvey Aluminum Sales, Inc. falsely reflecting that the said checks represented payment of legal fees to Wayne L. Bromley by Harvey Aluminum (Incorporated) and Harvey Aluminum Sales, Inc.; and

(c) That Robert G. Baker would cause each of said checks to be endorsed with the name "Wayne L. Bromley," would cause each of said checks to be cashed, and would secretly and surreptitiously receive the cash proceeds of said checks; and

(d) That Wayne L. Bromley would not perform any services of any nature on behalf of Harvey Aluminum (Incorporated); and

(e) That Wayne L. Bromley would not perform any services of any nature on behalf of Harvey Aluminum Sales, Inc.; and

(f) That Wayne L. Bromley would falsely report as his own income, on The 1964 Bromley Return, the \$10,000 proceeds of the said checks received in 1964 from Harvey Aluminum (Incorporated) and Harvey Aluminum Sales, Inc.

12. In pursuance of the aforesaid conspiracy, Robert G. Baker:

(a) Received \$2,500 in cash during 1963, which cash represented one-half of the proceeds of a check for \$5,000 made payable to the name "Wayne L. Bromley" by an attorney for the Redwood National Bank; and

(b) Did cause First Western Financial Corporation to issue during 1963 and 1964 a total of twelve checks for an aggregate total of \$14,000, all made payable to the name "Wayne L. Bromley;" and

(c) Did cause United States Freight Company to issue during 1963 and 1964 a total of fifteen checks for an aggregate total of \$7,500, all made payable to the name of "Wayne L. Bromley;" and

(d) Did cause International Marketing Associates, Inc. to issue during 1963 one check for \$500 made payable to the name "Wayne L. Bromley;" and

(e) Did cause Harvey Aluminum (Incorporated) to issue during 1964 a total of nine checks for an aggregate total of \$9,000, all made payable to the name "Wayne L. Bromley;" and

(f) Did cause Harvey Aluminum Sales, Inc. to issue during 1964 one check for \$1,000 made payable to the name "Wayne L. Bromley."

13. In causing the issuance of the checks referred to in Paragraph 12 of this Count, Robert G. Baker acted with the knowledge, purpose and intent that the proceeds of said checks would and did, in truth and in fact, constitute income to Robert G. Baker and not to Wayne L. Bromley.

14. In pursuance of the aforesaid conspiracy and to effect the objects thereof, the following overt acts and others were done and performed by the conspirators:

- (1) On or about March 12, 1963, at the office of the Senate Financial Clerk in the United States Capitol Building in Washington, District of Columbia, Robert G. Baker cashed a check for \$5,000 which was drawn at the request of an organizer of the Redwood National Bank by an attorney for the Redwood National Bank, which check was payable to Wayne L. Bromley.
- (2) On or about March 12, 1963, in the United States Capitol Building in Washington, District of Columbia, Robert G. Baker put \$2,500, in cash, in his pocket.
- (3) On or about April 21, 1963, Robert G. Baker, Clifford Jones, and Wayne L. Bromley met at the Thunderbird Hotel in Clark County, Nevada.

- (4) On or about September 2, 1963, Robert G. Baker caused an invoice for \$1,000 to be sent to First Western Financial Corporation on stationery bearing the name and purported office address of Wayne L. Bromley.
- (5) On or about September 19, 1963, at the National Capital Bank in Washington, District of Columbia, Wayne L. Bromley cashed a check for \$1,000 which was drawn by the First Western Financial Corporation and was payable to Wayne L. Bromley.
- (6) On or about September 19, 1963, in Washington, District of Columbia, Wayne L. Bromley handed Robert G. Baker \$1,000 in cash.
- (7) On or about January 30, 1964, Robert G. Baker caused an invoice for \$1,000 to be sent to First Western Financial Corporation on stationery bearing the name and purported office address of Wayne L. Bromley.
- (8) On or about February 20, 1964, at the National Capital Bank in Washington, District of Columbia, Wayne L. Bromley cashed a check for \$1,000 which was drawn by the First Western Financial Corporation and was payable to Wayne L. Bromley.
- (9) On or about February 20, 1964, in Washington, District of Columbia, Wayne L. Bromley handed Robert G. Baker \$1,000 in cash.
- (10) On or about April 21, 1964, in Washington, District of Columbia, Robert G. Baker caused an invoice for \$1,000 to be sent to First Western Financial Corporation bearing the name and purported office address of the law firm of Tucker and Baker and the typewritten name "Wayne L. Bromley."
- (11) On a date subsequent to May 11, 1964 and prior to June 4, 1964 (the exact date being to the Grand

Jurors unknown) at Las Vegas, Nevada, Clifford Jones had a conversation with William W. Francis, an officer of First Western Financial Corporation.

- (12) On or about July 2, 1964, at the National Capital Bank in Washington, District of Columbia, Wayne L. Bromley cashed a check for \$3,000 which was drawn by the First Western Financial Corporation and was payable to Wayne L. Bromley.
- (12a) On or about July 3, 1964, in Washington, District of Columbia, Wayne L. Bromley handed Robert G. Baker \$3,000 in cash.
- (13) On or about July 6, 1964, in Washington, District of Columbia, Robert G. Baker caused an invoice for \$1,000 to be sent to First Western Financial Corporation on stationery bearing the name and purported office address of Wayne L. Bromley.
- (14) On or about July 27, 1964, at the National Capital Bank in Washington, District of Columbia, Wayne L. Bromley cashed a check for \$1,000 which was drawn by the First Western Financial Corporation and was payable to Wayne L. Bromley.
- (15) On or about July 27, 1964, in Washington, District of Columbia, Wayne L. Bromley handed Robert G. Baker \$1,000 in cash.
- (16) On or about July 1963, the exact date being to the Grand Jurors unknown, at the United States Capitol Building in Washington, District of Columbia, Robert G. Baker had a conversation with David Fleming, an officer and representative of International Marketing Associates, Inc.
- (17) On or about July 1963, the exact date being to the Grand Jurors unknown, at the United States Capitol Building in Washington, District of Columbia, Robert G. Baker had a conversation with Stanley

Sommer, a representative of United States Freight Company.

- (18) On or about August 1, 1963, in Washington, District of Columbia, Robert G. Baker caused an invoice for \$500 to be sent to United States Freight Company on stationery bearing the name and purported office address of Wayne L. Bromley.
- (19) On or about August 22, 1963, in Washington, District of Columbia, Wayne L. Bromley cashed a check for \$500 which was drawn by United States Freight Company and was payable to Wayne L. Bromley.
- (20) On or about August 22, 1963, in Washington, District of Columbia, Wayne L. Bromley handed Robert G. Baker \$500 in cash.
- (21) On or about January 30, 1964, in Washington, District of Columbia, Robert G. Baker caused an invoice for \$500 to be sent to United States Freight Company on stationery bearing the name and purported office address of Wayne L. Bromley.
- (22) On or about February 20, 1964, at the National Capital Bank in Washington, District of Columbia, Wayne L. Bromley cashed a check for \$500 which was drawn by United States Freight Company and was payable to Wayne L. Bromley.
- (23) On or about February 20, 1964, in Washington, District of Columbia, Wayne L. Bromley handed Robert G. Baker \$500 in cash.
- (24) On or about June 3, 1964, in Washington, District of Columbia, Robert G. Baker caused an invoice for \$500 to be sent to United States Freight Company on stationery bearing the name and purported office address of Wayne L. Bromley.

- (25) On or about June 8, 1964, at the American Security and Trust Company in Washington, District of Columbia, Wayne L. Bromley cashed a check for \$500 which was drawn by United States Freight Company and was payable to Wayne L. Bromley.
- (26) On or about June 8, 1964, in Washington, District of Columbia, Wayne L. Bromley handed Robert G. Baker \$500 in cash.
- (27) On or about July 6, 1964, in Washington, District of Columbia, Robert G. Baker caused an invoice for \$500 to be sent to United States Freight Company on stationery bearing the name and purported office address of Wayne L. Bromley.
- (28) On or about July 6, 1964, Robert G. Baker caused a person other than Wayne L. Bromley to write by hand, on stationery bearing the name and purported office address of Wayne L. Bromley, a letter to United States Freight Company.
- (29) On or about July 3, 1964, Robert G. Baker caused a person other than Wayne L. Bromley to endorse the name "Wayne L. Bromley" upon a check for \$500 which was drawn by United States Freight Company and was payable to Wayne L. Bromley.
- (30) On or about August 2, 1964, Robert G. Baker caused a person other than Wayne L. Bromley to sign the name "Wayne L. Bromley" to an invoice for \$500 which invoice was on stationery bearing the name and purported office address of Wayne L. Bromley, and which invoice was addressed to United States Freight Company.
- (31) On or about August 7, 1964, Robert G. Baker caused a person other than Wayne L. Bromley to endorse the name "Wayne L. Bromley" upon a check for \$500 which was drawn by United States Freight Company and was payable to Wayne L. Bromley.

- (32) On or about August 1, 1963, in Washington, District of Columbia, Robert G. Baker caused a person other than Wayne L. Bromley to sign the name "Wayne L. Bromley," to a letter on stationery bearing the name and purported office address of Wayne L. Bromley, which letter was addressed to the President of United States Freight Company.
- (33) On or about January 1964, the exact date being to the Grand Jurors unknown, at the office of S. Keith Linden in Washington, District of Columbia, Robert G. Baker had a conversation with S. Keith Linden, a representative of Harvey Aluminum (Incorporated) and Harvey Aluminum Sales, Inc.
- (34) On or about January 20, 1964, in Washington, District of Columbia, Robert G. Baker caused an invoice to be sent to Harvey Aluminum Sales, Inc. bearing the name and purported office address of Wayne L. Bromley.
- (35) On or about March 6, 1964, at the National Capital Bank in Washington, District of Columbia, Wayne L. Bromley cashed a check for \$1,000 which was drawn by Harvey Aluminum Sales, Inc. and was payable to Wayne L. Bromley.
- (36) On or about March 6, 1964, Wayne L. Bromley handed Robert G. Baker \$1,000 in cash.
- (37) On or about April 1, 1964, in Washington, District of Columbia, Robert G. Baker caused an invoice to be sent to Harvey Aluminum (Incorporated) bearing the name and purported office address of Wayne L. Bromley.
- (38) On or about May 1, 1964, at the National Capital Bank in Washington, District of Columbia, Wayne L. Bromley cashed a check for \$1,000 which was drawn by Harvey Aluminum (Incorporated) and was payable to Wayne L. Bromley.

- (39) On or about May 1, 1964, in Washington, District of Columbia, Wayne L. Bromley handed Robert G. Baker \$1,000 in cash.
- (40) On or about August 15, 1964, in Washington, District of Columbia, Robert G. Baker caused an invoice to be sent to Harvey Aluminum (Incorporated) bearing the name and purported office address of Wayne L. Bromley.
- (41) On or about September 30, 1964, in Washington, District of Columbia, Robert G. Baker caused a person other than Wayne L. Bromley to endorse the name "Wayne L. Bromley" upon a check for \$1,000 which was drawn by Harvey Aluminum (Incorporated) and was payable to Wayne L. Bromley.
- (42) On or about December 27, 1964, at the home of Robert G. Baker in Washington, District of Columbia, Robert G. Baker met with Wayne L. Bromley.
- (43) On or about December 30, 1964, Wayne L. Bromley signed and caused to be mailed to the District Director of Internal Revenue for the Internal Revenue District of Maryland at Baltimore, Maryland, The 1963 Bromley Return.

In violation of Title 18, United States Code, Section 371.

[Signatures omitted]

Bills of Particulars

October 3, 1966

Edward Bennett Williams, Esq.
Williams and Wadden
1000 Hill Building
Washington, D. C. 20006

Dear Mr. Williams:

On September 20, 1966, the Government in its answer to Robert G. Baker's motion for a bill of particulars indicated, in response to Baker's requests Nos. 12 and 19, that the information would be furnished as soon as it was obtained.

In response to defendant's request No. 12, you are advised that the "other persons" referred to in Count Four are:

<i>Name and Address</i>	<i>Occupation</i>
William Ahmanson 3701 Wilshire Boulevard Los Angeles, California	Insurance
Robert M. DeKruif 3701 Wilshire Boulevard Los Angeles, California	Executive
David Hannah 605 South Serrano Los Angeles, California	Insurance
Joel Albritton	Attorney
Thomas C. Webster Suite 670 417 South Hill Street Los Angeles, California	Attorney
C. W. Ford 3909 Happy Valley Road Lafayette, California	Executive
Marvin L. Holen 970 Menlo Los Angeles, California	Attorney

<i>Name and Address</i>	<i>Occupation</i>
Edward Lasker City National Bank Building Beverly Hills, California	Attorney
John F. Marten 250 North Cliffwood Avenue Los Angeles, California	former president of Great Western Financial Corporation

In response to defendant's request No. 19, you are advised that the "other persons" referred to in Count Six are:

Marvin L. Holen 970 Menlo Los Angeles, California	Attorney
John F. Marten 250 North Cliffwood Avenue Los Angeles, California	former president of Great Western Financial Corporation
Emery J. Delmas 15144 El Camino Grande Saratoga, California	Attorney

Sincerely,

WILLIAM O. BITTMAN
William O. Bittman
Special Attorney
Department of Justice and
Attorney for the United States

[Caption omitted]

BILL OF PARTICULARS

In response to paragraphs 2, 3 and 5 of the defendant's motion for a bill of particulars, the Government submits the following information:

I. Paragraph 2 of Defendant's Motion

On his income tax return for 1961, defendant did not report income of approximately \$1,056.20 determined on the basis of the following checks issued to defendant by Senator George A. Smathers:

<i>Amount</i>	<i>Date of Check</i>
\$190.63	10/27/61
232.29	10/27/61
381.25	2/14/62
308.33	2/14/62
512.50	2/14/62

On his income tax return for 1961, defendant did not report interest income of about \$268.75, as represented by one of the following two checks of Senator George A. Smathers:

<i>Amount</i>	<i>Date of Check</i>
\$268.75	3/10/61
268.75	10/27/61

On Schedule C of his income tax return for 1961, defendant reported gross receipts in the lump sum figure of \$8,253.90. On Schedule C of his income tax return for 1962, defendant reported gross receipts in the lump sum figure of \$56,411.90. The Government is unable to state precisely the items of income which defendant received in 1961 and 1962 but did not include in gross receipts as reported on Schedule C of his income tax returns for those

years. Neither is the Government able to specify the exact date defendant received certain items of income. These circumstances are due to the fact defendant would not supply information to representatives of the Government and would not permit them to examine his records or question him. However, the Government alleges that defendant received the following items of income during 1961 and 1962 which were reported on his income tax returns for those years only to the extent they may have been included in the lump sum gross receipts figures on Schedule C of the returns:

Year 1961

1. Myron Weiner, \$5,000, paid about September 21, 1961.
2. Weisman, Celler, Allan, Spett & Sheinberg, \$2,500, paid about November 30, 1961.
3. Referral fees from Ernest C. Tucker, based upon his equal division with defendant of the following payments by Goodkind & O'Dea:

<i>Amount</i>	<i>Approximate Date of Payment</i>
\$1,250.00	2/13/61
416.60	9/18/61
833.34	10/ 5/61
416.66	11/ 3/61

Referral fees from Ernest C. Tucker, based upon his equal division with defendant of the following payments by Dearborn Machinery Movers, Inc.:

<i>Amount</i>	<i>Approximate Date of Payment</i>
\$338.13	June, 1961
500.00	August, 1961

5. Defendant's retained portion, \$1217.56, of the following commissions paid by Borinquen Meat Products, Inc.:

Amount of Check	Date of Check	Check Payee
\$ 984.69	10/17/61	Reina Benitez
	(Reina Benitez issued a check for \$492.35 to defendant on October 30, 1961.)	
1,075.22	11/ 3/61	Robert Baker
1,816.60	12/11/61	Robert Baker

6. Warren L. Neil, Jr., \$300, paid about June 29, 1961.

Year 1962

1. Approximately \$100,000 received by defendant in currency as set forth below:

Approximate Amount	Approximate Date of Receipt	Source
\$50,000	10/21/62	Stuart Davis
17,000	10/31/62	John F. Marten
33,000	11/ 9/62	Sidney M. Taper

2. Defendant's one-fourth share of the following commissions paid by Borinquen Meat Products, Inc.:

Date of Check	Amount of Check	Check Payee
1/26/62	\$2,298.51	Robert G. Baker
2/17/62	1,314.38	Robert G. Baker
3/20/62	1,340.83	Robert G. Baker
4/25/62	1,709.02	Robert G. Baker
6/19/62	2,146.16	Robert G. Baker
7/23/62	1,480.00	Bobby Baker
8/29/62	1,582.63	Robert G. Baker
10/ 4/62	3,498.11	Robert G. Baker
11/22/62	1,890.99	Robert G. Baker

3. Commissions or fees totaling approximately \$2,250 from Capitol Vending Co. and/or Ralph L. Hill, said pay-

ments being made in currency in amounts of about \$250 per month from approximately April to December, 1962.

4. Referral fee from Ernest C. Tucker, based upon his equal division with defendant of the following fee paid by Goodkind & O'Dea:

<u>Date of Payment</u>	<u>Amount</u>
1/4/62	\$433.34

II. Paragraph 3 of Defendant's Motion

Year 1961

Rent Expense	\$1,200.00
Interest Deduction	913.12

III. Paragraph 5 of Defendant's Motion

The information requested in paragraph 5 of defendant's motion is peculiarly within his own knowledge, and not that of the Government, since the defendant declined to furnish records or supply information to representatives of the Government in regard to his income, including the sources of the \$56,411.90 lump sum figure reported as gross receipts in Schedule C of his 1962 income tax return.

In supplying this bill of particulars, the Government reserves the right to introduce evidence relating to any additional items of defendant's income which may come to the attention of the Government subsequent to the date of this bill of particulars.

[Signatures omitted]

[Caption omitted]

BILL OF PARTICULARS

In response to paragraphs 7 to 11, 14 to 18, 24, 26a, and 41 to 43 of the defendant's motion for bill of particulars, the Government submits the following information pursuant to the order of the court.

1. Paragraph 7 of Defendant's Motion: The money was received by defendant at the Statler Hilton Hotel, Washington, D. C., and was carried away from that place by him.

2. Paragraph 8 of Defendant's Motion: Defendant stole, took and carried away the money through false representations that it would be used for political campaign purposes of members of Congress.

3. Paragraph 9 of Defendant's Motion: Defendant received approximately \$50,100 on October 21, 1962 from Stuart Davis at the Statler Hilton Hotel in Washington, D. C. and either converted this money to his own use at that time and place or some time thereafter.

4. Paragraph 10 of Defendant's Motion: Defendant converted the money referred to in Count 4 by retaining it and using it for his own personal benefit rather than the purpose for which it was intended, including the placing of some of the money in banks and utilizing some of it for personal enterprises and purposes.

5. Paragraph 11 of Defendant's Motion: The money referred to in Count 4 was entrusted to the defendant on October 21, 1962 at the Statler Hilton Hotel in Washington, D. C. The money was entrusted to the defendant by Stuart Davis when he personally handed the money to him. It was entrusted to the defendant for use for political campaign purposes of members of Congress.

6. Paragraph 14 of Defendant's Motion: The money was received by defendant at the Sheraton Carlton Hotel,

Washington, D. C., and was carried away from that place by him.

7. Paragraph 15 of Defendant's Motion: Defendant stole, took and carried away the money through false representations that it would be used for political campaign purposes of members of Congress.

8. Paragraph 16 of Defendant's Motion: Defendant received approximately \$15,800 from John Marten on October 31, 1962 at the Sheraton Carlton Hotel in Washington, D. C. and either converted this to his own use at that time and place or some time thereafter.

9. Paragraph 17 of Defendant's Motion: Defendant converted the money referred to in Count 6 by retaining it and using it for his own personal benefit rather than for the purpose for which it was intended, including the placing of some of the money in banks and utilizing some of it for personal enterprises and purposes.

10. Paragraph 18 of Defendant's Motion: The money referred to in Count 6 was entrusted to the defendant on October 31, 1962 at the Sheraton Carlton Hotel in Washington, D. C. The money was entrusted to the defendant by John Marten when he personally handed the money to him. It was entrusted to the defendant for use for political campaign purposes of members of Congress.

11. Paragraph 25 of Defendant's Motion: Defendant aided and assisted in the preparation of the return by supplying figures and information and by preparing parts of the return in draft or preliminary form.

12. Paragraph 26a of Defendant's Motion: The Government does not claim that the agreement referred to in paragraph 6 of Count 9, or any part of it, was in writing.

13. Paragraph 41 of Defendant's Motion: There are no aiders, abettors, or co-conspirators, other than those named

in the indictment, which the Government knew to be such at the time of the indictment.

14. Paragraph 42 of Defendant's Motion: There are no aiders, abettors or co-conspirators unknown to the Government at the time of the indictment who have since become known to the Government as such.

15. Paragraph 43 of Defendant's Motion: The Government knows of no overt acts in furtherance of the conspiracy which were unknown at the time of the indictment.

[Signatures omitted]

Motion for Severance

[Caption omitted]

Defendant moves, pursuant to Rules 8(a) and 14, Federal Rules of Criminal Procedure, for an order severing each of the nine counts of the indictment from each of the others, except Count Three from Count Four and Count Five from Count Six.

The ground for this motion, as more fully set forth in the Memorandum of Points and Authorities filed in support hereof, is that the various counts sought to be severed from each other are not properly joinable under Rule 8(a), because they charge offenses not of similar character and not based on the same or connected acts or acts constituting part of a common scheme or plan, and because the defendant is prejudiced by joinder.

[Signatures omitted]

[Caption omitted]

**Motion to Dismiss the Indictment or in the Alternative for
Inspection of the Grand Jury Minutes**

Defendant Baker moves pursuant to Rule 12, Federal Rules of Criminal Procedure for an order dismissing the indictment and/or for such other and appropriate relief as justice may require on the ground here specified and further set out in the attached Memorandum of Points and Authorities and the Appendix submitted in support of this motion.

The ground for this motion is that the extensive and intensive publicity which preceded and continued through the grand jury's deliberations calling for defendant Baker's indictment and even discussing some of the transactions later embodied in the indictment, could not have done otherwise than cause bias in the grand jury.

If the court does not rule favorably on defendant's motion to dismiss, he asks that he be given access pursuant to Rule 6(e), Federal Rules of Criminal Procedure, to the grand jury minutes in order to ascertain whether the minimal steps established by the Supreme Court in *Beck v. Washington*, 369 U.S. 541 (1961) to prevent bias in the grand jury were followed here. If such steps were not taken, the defendant would have grounds for a renewed motion to dismiss the indictment.

[Signatures omitted]

[Caption omitted]

Motion for Suppression of Evidence

Defendant Robert G. Baker moves, pursuant to Rule 41(e), F.R.Crim.P., upon the facts contained in the annexed affidavit and such further facts as will be produced at the hearing hereof, for an order suppressing all recordings, transcripts and other evidence of conversations in

which he participated, relating, directly or indirectly, to the subject or subjects referred to in the indictment, which evidence was obtained by or on behalf of the United States Department of Justice or its agents by the use of electronic eavesdropping devices, in violation of the Fourth and Fifth Amendments of the Constitution of the United States and section 605 of the Federal Communications Act, 47 U.S.C. § 605; and defendant further moves that the Court afford him a hearing for the purpose of fully effectuating his right to be free of any indirect effects of the aforesaid illegal eavesdropping.

As grounds for this motion, defendant states, all as more fully set forth in the affidavit and the Memorandum of Points and Authorities filed in support hereof, that:

1. He has had conversations with numerous persons, both face-to-face and by telephone, in various places in Las Vegas, Nevada, and elsewhere, concerning matters and transactions referred to in the instant indictment.

2. Agents of the Federal Bureau of Investigation, by means of illegal electronic eavesdropping, have overheard and recorded his said conversations in Las Vegas, Nevada, and elsewhere.

3. The instant prosecution is based, directly or indirectly, upon evidence obtained through the said illegal electronic eavesdropping.

[Signatures omitted]

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO SUPPRESS

As shown by the affidavit filed in support of this motion and as will be proven at the hearing thereof, during the period covered by this indictment:

- (1) The defendant met with other persons in various specified places and had conversations with them relating to the subject matter of the indictment.

(2) He also had telephone conversations, from other places, with persons in those specified places, relating to the subject matter of the indictment.

(3) The Federal Bureau of Investigation illegally installed and maintained electronic eavesdropping devices in those specified places by means of which it overheard and recorded all conversations occurring in the said places and over the telephones in the said places, including the aforesaid conversations of the defendant.

This motion seeks the suppression of all such illegally obtained evidence of such conversations, as well as any other evidence obtained as a result thereof.

There is no question that the Fourth Amendment to the Constitution of the United States applies to "the overhearing of verbal statements as well as [to] the more traditional seizure of 'papers and effects' ". *Wong Sun v. United States*, 371 U.S. 471, 485 (1963). Nor is there any doubt that such egregiously illegal eavesdropping as was practiced here falls afoul of the constitutional prohibition. *Silverman v. United States*, 365 U.S. 505 (1961). Moreover, to the extent that the Fourth Amendment has been violated, so has the Fifth. See the dissenting opinion of Judge Washington in the Court of Appeals in *Silverman, supra*, 107 U.S. App. D. C. 144, 150, 275 F. 2d 173, 179 (D.C. Cir. 1960); see also *United States v. Stone*, 232 F. Supp. 396, 400 (N.D. Tex. 1964). Finally, the overhearing and recording of the telephone conversations violated not only the Constitution, but also § 605 of the Federal Communications Act, 47 U.S.C. § 605.

That the defendant cannot pinpoint in this motion the specific items of evidence sought to be suppressed cannot be held to weaken his claim. By its very nature, the government's misconduct denies its victims any means of discovering the extent to which they have been victimized. Indeed, more often than not, the misconduct itself remains completely undetected. As Judge Learned Hand said in

Goldstein v. United States, 120 F. 2d 485, 488 (2d Cir. 1941), *affirmed*, 316 U.S. 114 (1942), "it is unfair to throw upon the innocent party the duty of unravelling the skein which the guilty party has snarled."

When, as here, the defendant manages to learn that the government has committed excesses, the law provides machinery to assure that the offender shall not profit by the offense. Not only is the illegally obtained evidence forbidden to be used in court, *Weeks v. United States*, 232 U.S. 383 (1914); *Nardone v. United States*, 302 U.S. 379 (1937); but it may not "be used at all." *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920); *Nardone v. United States*, 308 U.S. 338 (1939). The law has not yet devised a way of protecting the victim who never even learns that the illegal conduct has been committed. But for the "lucky" victim who happens to have discovered the government's misconduct, means are provided to explore the extent to which that misconduct has befouled the case sought to be presented against him. Once the accused shows the government's unlawful conduct, "the trial judge must give [him] opportunity, however closely confined, . . . to prove that a substantial portion of the case against him was a fruit of the poisonous tree." *Nardone v. United States*, 308 U.S. at 341. The burden is then upon "the Government to convince the trial court that its proof had an independent origin." *Ibid*.

The affidavit filed herein describes not a careless peccadillo or two or a fortuitous breach of propriety by the government, but a studied, well-organized, amply financed criminal conspiracy. The breadth of its reach, the intensity of its penetration and the utter disregard for law exhibited by the agents in its operation almost defy belief. Yet, we venture to say, little or none of what the affidavit sets forth will be denied. In any event, it can be proven at the hearing. On the strength of the showing already made, it is submitted, the defendant is now entitled to an

opportunity to demonstrate that, not only isolated, identifiable incidents alleged in the indictment (see, e.g., Overt Act No. 3 in Count Nine), but "a substantial portion of the case against him was a fruit of the poisonous tree."

[Signatures omitted]

[Caption omitted]

AFFIDAVIT

PETER R. TAFT, being duly sworn, deposes and says:

1. I am an attorney for the defendant Robert G. Baker in this case. I am filing this affidavit in support of said defendant's Motion for Suppression of Evidence herein. Almost all of the information hereinafter stated concerning electronic eavesdropping and wiretapping in Las Vegas, Nevada, is based either on depositions under oath by officials of the Central Telephone Company in the case of *Edward Levinson, et al. v. Central Telephone Company*, Civil Action No. 643, United States District Court for the District of Nevada, or on conversations of attorneys for the defendant herein with attorneys for the Central Telephone Company and attorneys for the Department of Justice, or on official records of the Central Telephone Company. If the Court so requires, the defendant's attorneys will provide the Court with the depositions referred to and with the exact time, place and persons present and substance of said conversations relied upon.

2. On or about May 18, 1961, agents of the Federal Bureau of Investigation leased 25 telephone lines from their office building at 310-11th Street, Las Vegas, Nevada, to the Central Office of the Central Telephone Company, Southern Nevada Division, at 125 Las Vegas Boulevard, Las Vegas, Nevada. The lines were leased in the name of a fictitious company known as Henderson Novelty Company. Bills were sent either to 301 South 11th Street, or

to a Post Office Box rented in the name of Henderson Novelty Company: P. O. Box 1423, Las Vegas, Nevada. These 25 lines were known as the LL 24 series of leased lines, going from LL 24-1 to LL 24-25, using cable 12, pair 1476 to pair 1500, of the Central Telephone Company lines.

3. The Federal Bureau of Investigation employed these leased lines in a massive wire-tapping and eavesdropping surveillance of the Las Vegas gambling casinos and persons connected therewith. The Bureau's method was to select a room where conversations it wished to overhear were likely to occur; to place in the room, either by trespass or deception, a bugging device connected to its telephone system and so located as to pick up not only conversations in the room but also both ends of telephone conversations held in the room; and to order the telephone company to connect one of the leased lines to the telephone system of the room.

4. The exact number of such separate installations is unknown to affiant. Affiant has learned, however, from the service order journal of the Central Telephone Company, covering the years 1962 and 1963, that there were at least 24 to 26 separate uses of the LL 24 series of leased lines between January 1, 1962, and August, 1963. The total number of uses and all of the specific places which were bugged are facts which can be obtained only from the Federal Bureau of Investigation and, perhaps, from the Central Telephone Company. Of the eight bug locations known to affiant, all involved eavesdropping on gambling casinos or the homes of casino operators.

5. The bugging operation in the Fremont Hotel is typical of the F.B.I.'s use of the leased lines. On or about October 30, 1962, agents of the F.B.I. asked that LL 24-9 be connected with the main frame of the Fremont Hotel in Las Vegas, Nevada. A copy of the service order, an official record of the Central Telephone Company, ordering the installation of this line is attached hereto as Exhibit

A. Thereafter, said agents, with the aid and complicity of employees of the Central Telephone Company, placed an electronic eavesdropping and wiretapping device in the phone in the office of Edward Levinson and connected said device to LL 24-9. On information and belief, said device would pick up all conversations held in the office of Edward Levinson and both ends of telephone conversations made to or from the phone in said office. Said conversations were monitored and recorded at the FBI building. The device remained in the phone until Saturday, April 27, 1963, when it was discovered. Agents of the F.B.I. contacted the commercial office of the Central Telephone Company on Monday, April 29, 1963, and asked that LL 24-9 be disconnected. A copy of the telephone company record disconnecting said line is attached hereto as Exhibit B. Copies of the billing stubs for the period during which LL 24-9 was connected to the Fremont Hotel are attached hereto as Exhibit C.

6. During the period since 1961, the F.B.I. maintained a second eavesdropping device at the Fremont Hotel. Its specific location, however, is unknown to affiant.

7. On numerous occasions during the period of the Fremont Hotel bugging, defendant had meetings in the office of Edward Levinson and elsewhere at the Fremont Hotel. He also telephoned the aforementioned places on numerous occasions. In many of the aforesaid meetings and telephone conversations he discussed some of the matters referred to in the indictment. Everything said in those meetings and those telephone conversations came within the scope of the F.B.I.'s electronic surveillance and was overheard and recorded.

8. In the winter and spring of 1962 to 1963, defendant frequently stayed at the Sands Hotel in Las Vegas. When not there, he frequently telephoned to the apartment of Carl Cohn, one of the Sands' managing partners, and else-

where in the Sands. In February, 1963, agents of the F.B.I. asked that LL 24-15 and LL 24-16 be attached to the mainframe of the Sands Hotel. The agents then placed an eavesdropping device to each of the leased lines in the apartment of Carl Cohn in the Sands Hotel. On information and belief, LL 24-5 was also attached to the mainframe of the Sands Hotel for the purpose of eavesdropping and/or wiretapping between 1961 and the present. LL 24-15 and LL 24-16 were billed to the Henderson Novelty Company until May, 1963, after which they were billed to Clark Associates, a successor company to Henderson Novelty Company created by agents of the F.B.I. after the discovery of the Fremont device. The Sands Hotel devices were discovered on July 2, 1963, and the agents ordered the lines disconnected on July 12, 1963. The installation and disconnect orders on LL 24-15 and LL 24-16 are attached hereto as Exhibits D and E. Consequently, just as in the case of the Fremont, all of defendant's conversations at the Sands and by telephone to the Sands, many relating to the subject matter of the indictment, were overheard and recorded.

9. A device just like those installed in the Sands was found in August, 1963, in the office of Major Riddle, a managing partner of the Dunes Hotel. How long it had been there and to which of the LL 24 lines it was attached are unknown to affiant. However, defendant, in the early part of 1963, was often in that office and often telephoned to that office, discussing some of the matters referred to in the indictment. His said conversations, like those earlier referred to in connection with the Fremont and the Sands, were overheard and recorded.

10. The defendant also had meetings in and spoke by telephone to the executive offices and other locations at the Thunderbird Hotel and the home and law office of Clifford Jones in Las Vegas. On August 15, 1965, Jones had his law office at 230 Las Vegas Boulevard, Las Vegas, Nevada,

checked by an electronics expert for possible eavesdropping or wiretapping devices. The expert found secreted in a telephone well in the wall, a small microphone and radio transmitter powered by current from the telephone lines. On the basis of present knowledge, affiant does not know how long said device was secreted in Clifford Jones' law office or who placed it there. Nor has affiant, up to this point, uncovered the evidence with which to prove that the F.B.I.'s massive electronic surveillance of the Las Vegas gambling casinos encompassed the Thunderbird Hotel. In view of the fact, however, that he can prove that the surveillance covered not only the Fremont, Sands and Dunes, but also the Desert Inn, Stardust and Flamingo, he submits that it is highly probable that inquiry at a hearing ordered by this Court will promptly reveal that the Thunderbird was covered as well. Defendant's conversations with Clifford Jones, named as a co-conspirator in the indictment, apparently loom large in the prosecution's case. Since some of those conversations occurred in Jones' bugged law office and others (see, e.g., Overt Act No. 3 in Count Nine of the indictment) in the undoubtedly bugged Thunderbird executive offices, frequently used by Jones for his meetings, there can hardly be any question that the conversations were overheard and recorded.

11. The F.B.I.'s large-scale electronic surveillance was not confined to Las Vegas. An identical operation, using leased telephone lines, eavesdropping devices built into normal telephone company connecting blocks, fictitious names, and complicity of telephone company employees, was uncovered in Kansas City during hearings held by the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary. The general scheme in Kansas City was described in the testimony of Arthur Brewster, Division Security Supervisor in the legal department of the Southwestern Bell Telephone Company. See Transcript, volume 3, Subcommittee on Administrative Practice and Procedure of the Committee on the Judi-

ciary, Surveillance Techniques of the Internal Revenue Service, Wednesday, October 30, 1965, Kansas City, Missouri, pp. 460-88. Mr. Brewster testified that he was the primary contact with the Federal Bureau of Investigation for the installation of leased lines. He stated that the Bureau probably contacted his office rather than the normal business office because the lines were used "for the purpose of listening devices". *Id.* at 462-63. These lines were strung from the FBI office to terminal spots at designated addresses. These terminal spots could be either at a utility pole behind the premises or in the basement. *Id.* at 480. Mr. Brewster testified on the basis of telephone company records that leased lines were installed from the FBI office to the premises of various suspected gambling joints in Kansas City on February 3, 1961 (two lines); on April 24, 1961; January 1, 1962 (two lines); February 19, 1962 (two lines); June 10, 1964; and January 5, 1965. *Id.* at 473-82. Mr. Brewster also stated that leased lines could be used for wiretapping. The testimony continues:

"Senator Long. It could be true of the hotel, yes, if you wanted to wire into one of the hotels, you could come into the basement and it would be a simple matter to hook it on to any room in the hotel, wouldn't it?

"Mr. Brewster: That's right."

Id. at 481. Mr. Brewster stated that if one were familiar with the terminals in a building terminal box, a wiretap by means of a leased line could be hooked up in 30 seconds. *Ibid.* Other telephone company employees testified to the attempted installation of a listening device into the Original Toy Shop in Kansas City. *Id.* at 439-40, 443-45. These employees were shown the listening devices by the agents of the F.B.I. *Id.* at 440, 445. They were described as being built into a connecting block, a normal piece of telephone equipment. *Id.* at 439, 447. This is identical to the devices used in Las Vegas.

12. On information and belief, a similar F.B.I. eavesdropping and wiretapping scheme using leased lines has been uncovered in Miami, Florida.

13. On information and belief, the F.B.I. has conducted a similar electronic surveillance, including the use of leased telephone lines, in Washington, D. C. In the light of the F.B.I.'s close surveillance of defendant's conversations in Las Vegas, it is highly likely that they also included him in their Washington operation. Defendant's only assurance that his constitutional and legal rights will be protected can come from being afforded an opportunity at a hearing before this Court to learn the full extent to which his rights have been invoked. Only through such a hearing can defendant ascertain whether the F.B.I.'s Washington bugging operation has included his home, his law office, an apartment rented in his name at 308 N Street, S. W., and the various offices and telephones used by him in the United States Capitol Building.

PETER R. TAFT

Counsel for defendant Baker

Subscribed and sworn to before me
this 23rd day of April, 1966.

[Caption omitted]

**Government's Answer in Response to the Defendant's Motion
to Suppress the Government's Evidence**

In answer to the defendant's motion for suppression of evidence, the Government denies that any part of the evidence which forms the basis of this indictment was obtained from any improper source. Moreover, the Government further denies that it obtained any leads to the evidence behind these charges from any improper source. The Government's information and evidence concerning the charges in the indictment was all legally obtained from independent third party sources.

With regard to the allegations by the defendant concerning Clifford Jones, his co-conspirator, the Federal Bureau of Investigation has never, at any time, installed any eavesdropping device at his home, his law office or his office in the Thunderbird Hotel. Nor, as the defendant suggests, has the Federal Bureau of Investigation installed any eavesdropping device at the home of Robert G. Baker, his law office, the apartment rented in his name at 308 N Street, S. W., or at any of the various offices and telephones used by him in the Capitol Building.

However, in view of the defendant's motion for suppression of evidence and documents filed in support thereof, the Government believes that the defendant is entitled to a hearing as prayed in his motion.

Prior to this hearing, the Government will submit to the Court for its inspection all appropriate materials to assist the Court in its consideration of this motion.

[Signatures omitted]

[Caption omitted]

Motion Requesting the Court to Inspect in Camera, Certain Material Relating to Defendant's Motion to Suppress Prior to the November 15 Hearing Date

On April 25, 1966, the defendant, Robert G. Baker, filed eight pre-trial motions which included a motion to suppress the Government's evidence. In his motion to suppress, he alleged that the Government's evidence was illegally obtained through the use of electronic eavesdropping devices and that many of his conversations were overheard and recorded in various locations in Las Vegas, Nevada, Miami, Florida, and Washington, D. C.

The Government responded on June 24, 1966 and denied that any of its evidence or any leads thereto were obtained from any improper source. In view of the issues thus pre-

sented, the Court has set November 15, 1966 for a hearing on the motion and the trial of this case has been set for January 9, 1967, which is seven weeks after the hearing date.

The defendant's motion to suppress is far reaching. He lists numerous hotels and places in Las Vegas where he claims electronic eavesdropping occurred and where he also says he had conversations concerning matters referred to in the indictment. In the broadest possible way, he brings in Miami, Florida and Washington, D. C. and, without specifying time, place or location, charges electronic eavesdropping which affected him in these cities. Notwithstanding this broad approach, the Government is prepared to meet the defendant in the forum which he has chosen.

To meet the defendant's allegations squarely, however, which is what we intend to do, requires that we submit to the Court the relevant materials, where they exist, to negate many of the defendant's allegations. While the Government welcomes the opportunity to show the Court the frivolous nature of the defendant's allegations, under the case law, as we read it, the defendant is entitled to inspect only the materials which relate to the conversations at which he was present or in which he was a participant. It is the Government's position that the defendant is not entitled to any further inspection of this material. This being so, we respectfully submit that it is appropriate for the Court, prior to the hearing to examine all these materials and separate them accordingly.

The rights of the defendant are in no way prejudiced by this procedure, while the interests of justice are furthered. It will avoid any undue delay at the time of hearing and the issues presented to the Court will be narrowed. If the Court is first presented with this material for review at the time of hearing, a continuance of the hearing, and perhaps the trial, too, could occur.

This is not a novel procedure which the Government is now requesting. Trial courts are frequently called upon to examine, in camera, materials submitted to it by the Government and then decide the extent to which a defendant is entitled to production. In connection with the motion to suppress in *United States v. Costello*, 157 F. Supp. 461, *aff'd*, 255 F. 2d 876 (C.A. 2, 1958), *cert. denied*, 357 U.S. 937 (1958), the trial judge followed this procedure. For the Court's information, we are including copies of the pertinent portion of the transcript of the hearing to suppress the Government's evidence in the *Costello* case because of illegal wiretapping. (See particularly p. 185a of the Appellant's Appendix.) Moreover, with regard to Title 18, Section 3500 statements of Government witnesses, these need not be disclosed to a defendant unless the trial judge, on inspection, finds that they are relevant to the witnesses' direct testimony.

In conclusion, the Government submits that if this proposed procedure is accepted by the Court, the end result will be an efficient and orderly disposition of the hearing. These materials will be made available at a time and place convenient to the Court.

[Signatures omitted]

[Caption omitted]

Order

It is hereby ordered this 10 day of November, 1966, that the Government tender to the Court for its in camera inspection materials relating to the defendant's motion to suppress filed in this case. This submission is to be made forthwith.

s/ OLIVER GASCH

Oliver Gasch

United States District Judge

Defendant's Motion Exhibit 1**DATES AND VERBATIM ENTRIES OF CONVERSATIONS IN WHICH
ROBERT G. BAKER WAS A PARTICIPANT IN THE BUSINESS
SUITE OF FRED BLACK**

2/9/63 (Conversation between Baker and possible Mike Manatu (ph.))

Unknown male advised the operator if anyone called to tell them he had gone to Baltimore. Said he would call her back a little later.

Unknown male used the dial telephone and called Mike Manatu (phonetic) and said he was Bobby Baker. He said we would make our Committee assignments on Thursday and the Republicans will make theirs on Monday and hoped to get them all confirmed by the Senate on Monday. At our meeting yesterday Baker stated Dirksen introduced a bill to oppose Rucker's. To oppose both the minority and finance. Baker said he tried to get a commitment out of Dirksen that he won't refuse to vote in support of the tax bill out of the committee but they were not able to agree. Dirksen would not make a commitment and Baker said we reserved the right to clobber the hell out of it on the floor. Baker stated quite a few of the members were afraid. Baker advised "Umenski" (phonetic) has 18 votes and Dirksen has 33 votes and they all look good.

Baker said Mike I have got to leave to go to Baltimore and will be back home about 5 PM so you can call me at home or leave word and I will call.

2/11/63

Receives another call (from Bobby)
Indicates Baker coming at 6:30 & Black & Baker going out to Black's house for dinner.

Talks to Baker

After you left—McGuire stayed about an hour. Says U.S.A. in K.C. told him Kennedy & Katbenbach Lee called on p. phone—Lockheed & Boeing are persona non-grata (Def. Dept. looking at minutemen etc. recorded)

Hangs up phone

BL to Baker—"Taylor's come up w/a hell of an idea. You remember you told him one time about finding a good location for building a bldg.—for that center on the coast. He took it serious. He went out & he looked and found out that bldg are only about 40% occupied & their still bldg. He's been talking to some Dr'n. about it. Build a high rise hosp. w/150 Dr. offices on top. Let Dr's. participate in bldg the Dr. bldg part of it for profit. Keep the hospital itself for a knock off thing in the underground facilities in case of atomic attack or something." Indicated to Baker that Taylor had talked to several Drs. who were interested.

Baker—Tells Bl. congress interested in shelters.

Black—"Well, after you left, McGuire stayed almost another hr. This guy's real nice. He wanted me to have Stacy (?) come down here. Brief him on the whole thing—where the blame is—the whole fault lies. Then he's going over *missed* & go all the way. I told him I said Dick (McGuire?) I would think *missed*. Don't feel bad if you don't get anyplace because out in K. City the U.S. Atty. told me they got the word from Kennedy & Katzenbach to prosecute this thing to make this the Billie Sol Estes case of the year." "I said I think you are barking up a tree—but have at it.

Black to Baker—"I want to tell you what I want you to do, sincerely and personally. I want you to back away from my problems. If anything happens to me & I

have to go to the wrong place, I want somebody taking over to make a living for my family while I'm gone. You just pull away & don't concern yourself anymore w/it. I'll fight it out on local level here w/my people & if not possible here I'll fight it out down in Joplin. I got to be vindicated. While I'm not too (obscene) good to steal money from the gov't in taxes I just didn't. I'm sorry I didn't. I didn't do it & I'm sorry I didn't do it. I just got a bad break when your boy Kerr died thats all." Incidentally Moon M called me today & I call out & checked out this——account for him. Technically they are good as anybody. Financially they are very high in their bid. I told Moon that to tell them that.

Baker—I just told Ed Carter 30 min ago.

Black—Is he the pres.

Baker—Yeah & he said they complied w/agreements——makes comparison as to whether they want a Cadillac or Ford.

Baker tells Black to be certain if contract is awarded that Black find out a couple hrs. ahead of time & call them.

Black says usually I do.

Baker—Russell is not going to take the Space Committee. Anderson will.

Baker call Dean McGee of Kerr-McGee Oil Co. Okla City, Okla. (uses Black's #)

Black tells Baker—Carole wants him to call her. He does—tells her he is coming back to work later.

Baker to McGee—Elston trying to increase Finance Com. to 13 & 6. I think if D. Russell holds firm we'll be able to prevent it. Albert Gore said he was for it if they didn't put 2 more—boys on there.

Are you in your office by yourself? Well, Lyndon told me the other day that Carl Albert told him, they did not think Bob (Kerr), Jr. could win that seat. They want you to take it. I told them that was out. Tells McGee Albert wants to get Gen. Dynamics to build a plant in Okla. Carl says he's got to have something in his district to survive politically. D. Russell made a deal to Edmondson on Space Co. Clint Anderson isn't going to do anything for Okla anyway.

I talked w/Seeley—He has requested that Howard Johnson people locate 6 major in town locations to us. I'll tell him what you just me.

Black to McGee—Two things, 1st of all, since the old man died, this fellow Webb has gotten weaker & weaker where state of Okla is concerned. We sent them several things before the Senator died—ok—when we got them back & got back an ok on $\frac{1}{3}$ of what we wanted to put there. He's just not going to do anything for us. I'm getting concerned about a few things in Okla City itself. NASA is not helping us. When the Senator was alive—he'd be helping. I want you to know North American & F. Black aren't backing up one inch. He's pushing for N. American w/McGee.

Baker to McGee

Tells McGee about 2 friends own 2 banks & textile business. Wants to talk about possibilities of a holding co.

Baker to Black

"Earl Clementes' settled his." The FBI & Internal Revenue couldn't do a thing. Earle's deal. His lawyer (ex-Internal Rev. Lawyer) called Caplin. Caplin called Happy Chandler——can't get. Happy got a hold of Earle's lawyer—got him out of court. made the deal. They tell me one of the best criminal atty. here is Robert Ash.

Black—I wonder if they got the lines tapped.

Baker makes call to EM 2-1817 apparently his home—asks if dinner is ready.

3/4/64

Unk. man named Bob possibly Baker
I went down to Leaksville Sunday

Bob—Let's play golf. Missing most of conversation because of Suite 436.

Both parties talking at same time.
Black gets T. call.

Bl.—Did you check United out of Friendship.

Bob—Where are you going to W. Coast?

Bl.—Yeah (possibly Vegas)

Bl. Oh phone—call me back

P. call to Black

Bl.—Yeah—let it go—I'll check w/you in morning

excerpts

Bob—I'm going to talk to Jones tonight.

Black & Bob apparently discussing org. of Lockheed.

Baker—I'm really pooped tonight. This G.D. cold has got me.

They discuss McNamara name & Black mentions someone is Baker's pimp in Defense Dept.

Bob making call—Hi, you make it. I'll be out in a little bit. You tell me when. Ok.

excerpts

Black—If I had B. Kerr in the Senate—in the house I wouldn't care.

Apparently people in 436 left.

Black kidding Bob about girls. Talk about horse racing.

Black—I just made a deal today (discuss 561 recorded 556—his tax problems. \$384,000 worth.

Man's name is possibly *Bobb Miller*

3/8/63

Bobby Baker made a telephone call and asked for extension 6241. Baker asked if Dotty was there. There was a pause and said Mrs. Baker. I am at the D.C. National Bank and just signing your life away with this help. Baker stated he was filling out an application and commented on the number of papers. Baker advised he has to make a speech and has not prepared anything. Baker stated it has something to do with the legislative program of loan people and he had to be over there by six o'clock. According to Baker, Mr. Rogers stated that he Baker made the best speech and suggested he get up there and tell some stories. Rogers advised Baker that his, Rogers' speech was sick and that he needed him, Baker, there. Baker stated he has to go home and change clothes. He advised he was numb and has been down here two hours. Asked if you have any problems. Tell Bob Comstock I have not had time yet but I will ask John O'Toole (phonetic) to set up the time Monday and I will let him know by noon tomorrow what time. John is trying to set a time. Baker said the trouble is Smathers is going to be down there Monday with the Vice-President because they are having Saint Augustine's Day or something but I will talk to George about it, O. K. Baker stated when he gets through here he would call. He said O.K. honey, I have got to get home by midnight. Baker said anytime you want it, probably Tuesday or Wednesday and the next thing I have to do is to get you the money so you can go to Biggs or some manufacturer where you can buy all of your furniture. Baker stated he has to go to that Gridiron thing. He added you go ahead and go. He said two to five. Said we would drop by.

Baker dialed the telephone again and asked for extension 6241 and asked to speak to Dotty again. What did you do, put me on hold? Baker asked, so what happened. Baker said the Doctor can't tell about driving an automobile. Baker wanted to know if the Doctor X-rayed the bone. Baker said if Hugh Wilcox (phonetic) calls be backward. Baker stated he was going straight home from here. Said he would not be here much longer. I love you. See you.

Baker dialed telephone and asked for 3735, Mac, go on home son. Baker said something about getting him out of a big hole. Baker stated, now, if my brother-in-law, Bob Comstock calls asking for her, tell him she just stepped down the hall. Tell him the appointment is for 11 o'clock Monday, and he Baker will tell him tomorrow. Baker said you can close up at 5 o'clock. He wanted to know if any other messages for him. Baker said "tell Mike, based on our survey, so far it looks like we are only going to have two absentees and we are in good shape and if he needs to call me tell him to call Republic 7-5834, anybody else tell them I have gone to Baltimore. Baker said that is Fred Black's room at the Carleton.

Baker dials the telephone and asks if Larry Bernard is there. He says this is Bobby Baker. Larry, I talked to Dick McGuire and he said he thought it was awfully important if you are going to come back to Washington that we have the support of the U.S. Attorney out there, so at least he will know what we are doing and will not be antagonistic to us. Now the question is whether you want to come here before Fred testifies or after. Baker asks what is your opinion. Baker says "the U.S. Attorney, is he antagonistic? He is a Senator, right. Baker said I don't think there is any doubt that he will do that. Baker stated the question is, I mean Dick's judgment was we should not make this fellow antagonistic to us and to go tell him you

would like to see Cobenback (phonetic) but you do not want to antagonize him and you want him to know everthing you are going to do. Baker said if you get before the grand jury open your mouth. Baker stated I know we can get an appointment with Cobenback or Captain Back (phonetic) if we want, the question is, I am trying to do the trick and we cannot blunder it in defending this fellow because he is backing real good. Baker said if you get a chance to talk to him, you and counsel, let me know what you want me to do. Good bye.

Baker talking on telephone, did not hear a dial. He said Frank, I need you to do me a favor. I want you to interview a girl. Her name is Pat Winkin (phonetic). Baker said interview her from a secretarial position, she is a college graduate, speaks French and wants to work. He believes she is from California but Smathers is out of town and I will talk to George when he gets back but if you will interview her I will talk to George about it. About 11 o'clock Monday, I will have her come to your office. O.K. Eddie.

Baker was talking to unknown male and female in the room.

Woman's voice in room talking to man. Indistinct small talk. Man asked if she was going to take a bath. Said she could take one there. Big towels. He said, I'd better call and see if I can find out. It's 7:00 P.M. I said we'd be there at 7:30 P.M.

Phone call. Asks information for number of Mrs. John Sullivan, Dorchester House. (Phone book shows Dorchester House at 2480 16th St., N.W. and also lists a John F. Sullivan at 2480 16th St., N.W., phone AD 4-8550)

"Thank you." Dials.

Mrs. Sullivan? Is this Ad. 4-8550. This is Bobby Baker. Is this Hattie Sullivan? Where the hell is

she. Golf match? Did she go with Ott (phonetic)? Did she go in a cocktail gown? She was supposed to go to the F Street Club (phonetic), I thought: It's next Friday night? She got the word at 3 o'clock? So its next Friday (laughter) Hell, no. I didn't get the word. O.K.

Phone call. Asked for an indistinct extension. Is Warren Barker (phonetic) there? Bobby Baker. (Phone book gives a Warren J. Barker, 3633 Yuma, N.W.—966-8333) Baker says among indistinct remarks, Let's go to Baltimore to eat. (Asks woman in room if she can be ready by 8 (She says, Yes) Baker tells Barker, "Will call you when we're ready. Will go to Hausner's or somewhere like that. O.K.

3/11/63

Black and Bobby Baker talking in Black's apartment. Conversation indistinct. Black says do you think I ought to have him help me. Black says he has been awfully good to him and would do anything he asked. Conversation indistinct. Black says Bobby, number one "they ain't going to convict me." Bobby says he doesn't hold a grudge he won't vote. Black says one thing about me I don't need any help. Black says all anybody needs to do is pull this thing back for thirty days. He says he has these people coming in and they have signed statement of their own that Barry (phonetic) told them personally. Black says the funny thing about this I told Frank Talley (phonetic) on the telephone, he called me on the telephone from Chicago. He wanted to tell me what to say. I (Black) told him don't say anything but the truth, that is all you have to say is the truth. Black said you don't have to embellish it just say the truth. Black stated this is the hardest thing to do is to get people to say the truth. Black says he does not want him to lie for him or help him. All they need to do is tell the

truth. Black says somebody, I don't know who, is going to have to help him get this thing pulled back here for study before it goes to the Grand Jury. Black says whoever can do that he thinks he can put enough pressure on Barry (phonetic) to come up here and tell the truth. Black says unfortunately he has to go to trial. Black says he does not want to do it this way because it would kill him in the community. He (Barry or Baird) knows it and he would fight it every inch of his life. Black said if he would come in here and tell the truth. Black says he knows him well enough that he will. Conversation indistinct. Black says incidentally, number one, to be sure to write that letter down to the Dominican, wherever that is, number two how about his credentials. Conversation indistinct. Black says he talked to her Saturday night about 10 o'clock and she was in bed. Black says I think it was next door. Conversation indistinct.

Black says that was a surprise. Conversation indistinct. Black says Bobby let me tell you something, I have checked this Mellon out. Black says there ain't but one politician in the State of Missouri that this fellow Mellon is indebted and it is not Ed Long. Bobby asks who it is & Black replies Stuart Symington. Bobby says he can't do anything. Black says I know you cannot but Larry Bernard thinks he can. Black says he checked this out very carefully after a long (indistinct) about me. Black says incidentally which he was wrong about two. Black says Morris Pinkert (phonetic) is the better attorneys that the USA can't talk about. Black says this boy (Pinkert) and Mellon are law partners. Black says they are not as close as you (Bobby) and I (Black are but they tell the truth. Conversation indistinct. Black says he gains more respect for him every day. Black said he come over and laid out the insurance. Black was talking

about Earnie (phonetic) Conversation indistinct. Black said lets get rid of our expenses and get our money back and we need this summer to get rid of as many bugs as we can. Black says to have a neculus and told Bobby a fellow you might want to look eg at the fellow that Bob Kerr liked so well. Bobby says we are ready to hire him. Black says I know where he is Bobby says at the International Inn. Black said he would give it polish. Black says he stayed down here until one o'clock this morning going over everything we have to do to make this thing work. Black said we concentrate on how to keep the costs down and we are going to pay cash for everything we are going to buy. Black says he can tell how much money we took in and what our inventory are. Black says this is the only way you can survive. He says you have to be tough to survive. Black says if you can build up a neculus you can depend on. Black says we are going to have a show place. He said if we are going into business we are going to show a profit. Conversation indistinct. Telephone rang & Black answered and said hello, Gene you are here. Black said where did they get you a place to stay. Black said I think she got you at the Lafayette, just one half block from here. Black said to check it out and if not come on down here and stay. Black said I have some people coming in but will not arrive until late tomorrow. Black said check it out and call me back in a minute as he (Black) wanted to leave. He hung up the telephone.

Black said he talk to Drake (phonetic) today and told him that I needed \$50,000 for a new facility in California. Black told him I am getting ready to take over a new thing in WDC and wanted to know if he wanted to go in on it. Conversation indistinct. Black asks Bobby if Johnson is going to be here tomorrow. Bobby says I doubt it. Black wanted to know when

he would be in town for a day or so. Black said he got in the mail this morning three models of this house. Black says I don't want to do anything until Johnson sees them. Black says it is the most beautiful thing you have ever eg. seen.

Telephone rang and Black answered. He said Gene, Bobby is the way down to the lobby. Black told Bobby to say hello to Gene in the lobby.

3/14/63

Crowd enters room. Heard Black and Baker and heard name of Jack mentioned. Babble of voices both male and female. Impossible to distinguish who said what or understand conversation.

Bobby Baker reenters room.

Incoming call. Black said he wanted Taylor to come up and meet Baker.

Lee Taylor entered. Introduced to Baker. Taylor begins discussion of charges of conflict of interest against Black. Baker evidently left as no remarks by him or references to him.

Black called Baker to come up & meet an unid person. He then called unid person, asked if "he" could come up & say hello to Bobby Baker.

After both arrived, Baker said "Hello Mr. Director. Congratulations." (Leland Taylor appointed Director of No. Am.)

Man said "Hello Bobby, how are you?"

3/27/63

Bobby Baker overheard talking on telephone. He said he was at "Fred's place." Probably talking to his office. Asks if there are any messages for him. Baker asks to speak to Ryan (phonetic) to see whether he has to go up there or whether Ryan can come down to see

him. Baker says he is trying to figure out if we can do our business on the telephone or whether he (Baker) should come back. Baker discussing the passage of some bill. Baker says Proxmire, no. Muskee, no. Baker asks Ryan if he is coming to the conference tomorrow. Baker also asks Joe if he is coming. Baker asks for any other telephone messages. Baker asks to talk to Sarah (phonetic). Baker says to go home and get dressed and he will be in Bedfords room. He said he did not know the number. (Believe Bedford is in the Carlton). Said he has to make some telephone calls. Baker asks if she wants to bring his car down here. He says its up there just call the garage. Baker hangs up the telephone (2-69)

Baker dials telephone and asks for Mike Manatue (phonetic). Baker says to Mike you have a lot of homework to do. Baker says the Commerce bill is acceptable to the Administration. Baker says he has not talked to Keith Williams but will talk to him as soon as they finish. Baker says here is our problem, we have a lot of new frontier men. Baker says, Burdick, Engel & Cannon will vote for the commerce bill. We think Fulbright will be O.K. Baker says they could not get Gore and Hill. Baker says to Mike if he has any way to get to Gore to get a commitment out of him. Baker says you ought to do it. Baker says he thinks Hill will go with John Sparkman. Baker adds Everett Jordan is against us but if his vote is different he may be absent and Baker says he is working on that. He says Russell Long as of now is against it but Baker states he is going to work on him. Baker says Bobby Gee (phonetic) is a very difficult vote. Baker says Ball (phonetic) is the same thing and asks Mike if he has him. Baker asks what about Moss, do you think you are going get him. Baker says Yarborough is doubtful. Baker says he (probably Yarborough) did order it out. Baker scays O.K.

Baker says Terish (phonetic) says no. Baker asks "will you put that on your list." Baker says Edmonson is undecided. He says he thinks he will be alright but you (Mike) had better work on him. Baker says Green wants to vote against it because Labor is opposed to it. Baker says Olin Johnson might vote with you but he wants to trade for the 30 year retirement bill. He says Smathers will vote for Long but Baker thinks he will vote for the Commerce bill. Baker says Proxmire, no; Muskee, no; McIntire, no. Baker asks do you have any information than we have. Baker says that is what they told us today. Baker says he, Ryan and Joe concentrated on those people who they thought were dangerous, based upon previous votes. Baker says after the conference tomorrow he will get back and see where we are then. Baker says if we don't pass this new compilation, he tells Mike, "your days at the White House are going to be limited." Baker hangs up telephone (70-100) Baker telephones and asks if "Ed Bostick was there." Baker says he is at the Carlton. He talks on house telephone and asks what room Hancock is in. Room 300. Baker asks that a message be left for Hancock to call Bobby Baker in room 438—Baker tells Bostick he will see him later. He hangs up telephone. (104-119) Baker dials telephone and asks for Senator Stanton or Cannon (phonetic). He says this is Bobby Baker. He wants to know if Jack Canton is there. Baker asks Canton what he is doing. They mention Ford Motor Co. Baker says he would not worry about it. He hangs up telephone. (120-133)

Baker dials telephone and inquires if Mrs. Baker is home. He says to tell her to go ahead and eat as he (Baker) has a meeting with Mr. Bostick. He hangs up telephone (133-138) Baker talking on telephone and asks the operator for the Overseas Operator. He says he wants to call Santo Domingo in the Dominican

Republic. Baker says he wants to call Mr. Dieago Borbas (phonetic) he is the Minister of Commerce and Industry in Santo Domingo. Baker says Borbos is with the Government and tell him Bobby Baker in WDC is calling. Baker said to charge it to his home telephone Emerson 2-1817—credit card number is 362-1817-532. Baker says he is calling from 737-5834. Baker tells operator to call him at Emerson 2-1817 up to midnight.

He hangs up telephone (138-153)

Baker dials telephone and asks for operator 63 in Las Vegas. Baker gives his name and says he is calling from 737-5834 and that Mr. Levison is calling him from 384-3323. Baker says Levison owns the Freemont Hotel. Baker talks to Ed Levison and says yesterday he talked to LaBoy (phonetic) he is Secretary to the President because he could not reach Borbos who is the Minister of Commerce and Industry. Baker says LaBoy would not be there Friday and Saturday but Dieago would be there and for us to come on. Baker said he received a call yesterday from Puerto Rico saying Mr. Borbos wanted me to bring you down there the week of April 1. Baker says he is a little confused as he does not know whether Borbos is expecting us. Baker says he has a perpetual call in for him and would let Levison know as soon as he reached Borbos. Baker says is Borbos is expecting us sometime Friday, can you get away. Levison answers he could not. Baker says Benny wants to come out there so you (Levison) had better let him know. Baker says he talked to him this morning. Baker says Dieago was probably out in one of the provinces.

Baker talks on other telephone and says to come down to 438. Baker goes back to Levison and says that was Hancock he is here. Baker says just confidentially, and he does not want to tell Fred, we got an offer to

buy this outfit here that is in operation for \$250,000 cash plus assuming their liabilities of \$290,000 Baker says we are talking about \$650,000 and they are doing 1½ million which includes Melpar's business. Baker said it would cost \$50,000 to \$100,000 to open a new business because of training people. Baker says we are going to look at the books. Baker talking about another person says he owes 390,000. Baker says he talked to two bankers locally today about handling the whole \$650,000 and they were interested. Baker said there are details he has to work out but did not want to tell Fred because he flies off the handle. Baker asks Levison if they indicted Fred today. Baker says if you go down on April 15, maybe he, Baker, should wait and go then. Baker says if he goes he will talk about the tobacco plant and will let him know. Baker says he has reservations at the Ambassador, the same place that they stayed. Baker hangs up telephone (153-207)

Door opened and unknown male entered (probably Hancock) They are talking very low but sounds if they are discussing the deal previously mentioned. Discussing loans. Baker said Fred is coming in the morning. Baker mentioned General Electric & Dupont Co's. Baker says to Hancock you just stand by my side. They mentioned Crown Cork Co. and the number of employees. Hancock said he would lay it all out for Baker and Fred and that he, Hancock, could open the door. Baker wants to know how long it would take to make an audit. Baker says the equipment is 10 years old but the business is good. Baker mentions \$150,000 tax loss and discuss the cash flow of the business. He says they have a \$20,000 a month cash flow. Baker wants to know if that includes the office equipment. Baker mentions another 100 rooms & then they would have a two million dollar place. Baker says he does not like to buy anything more than 10

times earning. Hancock says some people buy on cash flow. Baker and Hancock are discussing how to determine worth of company.

Baker dials telephone and says DeWitt (phonetic) what are you doing? Says he will be in room 300 and hangs up the telephone. Baker says he wants to protect Hancock from his clients and does not want him to get into any trouble.

4/4/63

Phone dialing and asked for Ext. 2995. F.B. called party "Robert." F.B. advised Robert he had a couple of people in his room and couldn't come up to the Capitol tonight. F.B. inquired if Robert knew anyone who would buy "a couple points" in their company. Also asked how much the points are worth now. F.B. indicated need of some quick funds. Also F.B. inquired if Robert going to Bostick's tonite F.B. isn't.

After hanging up FB advised UNM he had no intention going up to the Capitol tonite.

Phone dialed. FB: "optr 63, Las Vegas, Nevada, DU 4-3333 0879x. Ed Levinson."

FB advised Levinson just got finished with "Bobby." FB made such a good case that Mike almost took the matter to the "floor of Congress." Only identification was "the Oklahoma City matter." FB will meet Levinson at Airport Mariner Hotel or an unident coffee shop near Levinson's office. Had few things to talk over with Levinson. Discussed his tax case trial in KC or WDC—his choice to make. FB inquired if L had anyone who could buy a few points in "our company" FB wants some quick cash and will call L in the morning. FB said business was good swung a 120 to 130 million dollar deal for N.A. today. F.B. was with Bobby a lot today and will be talking more with Bobby later.

Dialed phone asking for Ext 2995. FB: "Bobby, just talked to Ed." FB advised Bobby to call Lee Taylor "later when he was alone" and get his reaction to an undecipherable point.

4/15/63

Baker (?) I think & girl arrive in Black's apt. Baker makes O.G. call after asking operator for tel. # of Walter A. Stewart. Baker tells party on phone or asks re an Eastern Flt at 9:30 for 4/16/63.

Baker goes back into bedroom to talk to girl—can't hear conversation. Calls her Baby.

Radio or TV on—It's TV.

Someone left suite—probably Baker

4/18/63

....

Black spoke to Bobby and said he worked for him today as he (Black) did a job for Atwood today. Black said Bob Kerr, Jr. was not going to run for the Senate. Black said Kerr, Jr. was guy to take care of his father's estate. Black told Bobby he would see him Saturday in Las Vegas. Black spoke to Eddie again and asked if he thought the boy would come through in Santo Domingo, Dominican Republic. Black said to keep on him so he will keep working for us. Black hung up.

Defendant's Motion Exhibit 2**DATES AND VERBATIM ENTRIES OF CONVERSATIONS IN WHICH
ROBERT G. BAKER WAS A PARTICIPANT IN THE BUSINESS
SUITE OF BENJAMIN SIGELBAUM**

3/23/63

BS dials—BOBBY BAKER please . . . Bobby?—This is BEN SIGELBAUM—what the hell are you doing in town? . . . Well what the hell are doing at the SHEBORNE, I dont mean to sound despariging but that is hardly a high echelon type place and not befitting your character (laughs)—Well we could have fixed you up with something—we could have arranged that . . . Yes, I'll be going out around 12:30, Do you want to go? . . . okay I'll be in the office, do you know the number? Okay (t)

BS answers—Yeah BOBBY (BAKER) . . . You going out? . . . yeah . . . well listen my box is 47X why dont you come on over, maybe I can get you some seats, I dont know how many is in your party though . . . yeah well okay . . . (BS gives BAKER directions to GULFSTREAM and hands up)

3/27/63

BS places LD call to BOBBY BAKER Capital 4-3131—Ext. 3737 Washington, D. C.—BOBBY,—Bob you mentioned something to me when you were down here about stock—I forgot the name of it, what was that . . . I see, is it anything? . . . yeah . . . I see thats what his opinion is huh? . . . I see—BOBBY, uh whats what-his-name, GENE doing out there—yeah I understand GENE is there and does it look like we're going to get anything up there—I'll tell you—one of the reasons that I called, I was very much disturbed when I heard something about FRED—is there anything to it? . . . Oh no, I just heard about it, I was a little bit disturbed, I didn't want to call him because its delicate you know . . . and they wont . . . well why is it a political thing? . . . well he's too

busy reading a racing form, I honestly dont think the guy knows what he's doing anyhow about some of these things . . . I do too, but dont you see he's a smart man and he's a shrewd business man when you get him down but—I dont think he's a good man on details . . . but the repercussions are going to be tremendous as far as he's concerned . . . well certainly because he'll be guilty by just the indictment, you know that—you know the thinking of people—but that doesnt make him guilty, he'll have his day in court . . . yeah, hows it going to effect his association and his job?—Do you think it'll have any effect there? . . . you know with his way of life he cant give up an income like that . . . like us poor people (laughs) . . . well I was disturbed and I wanted to call but this is a delicate thing and I . . . I see . . . it has to be done on a business basis and business connections—political connections, they want to take their hands off that because they dont want to get their hands spoiled . . . they're scared and it'll just focus the spotlight on them . . . (laughs) . . . yes thats what I was going to say, if they'd change it to a civil fraud case and let him pay the penalty . . . yes its only dollars then and I'm sure we could work that out . . . he's got good friends that can help him . . . well of course and indictment doesnt mean a trial yet . . . I see—alright . . . they'll have maybe a year or two to work on it after the but its the inictment there that might effect his position where he works—well Bob nice talking to you although the news you gave me is not very pleasant . . . well then thats fine, I think I'll take a flyer with it—nice talking to you—(t)

6/5/63

BS ans—(BOBBY BAKER returning call) Conversation re OZZIE—BS tells BAKER he is hesitant to voice opinion re deal because he has not taken an active hand in operating SERV-U up to now but he personally thinks OZZIE and deal would be a terrific boost—states he

knows FRED BLACK is dead set against deal and doesnt want BLACK to know he favors it—asks BAKER if there is anything he wants him to tell LEVINSON—(t)

3/18/64

BS places a long distance call to BOBBY BAKER:

BS—ROBERT, looks like I close the show doesn't it? —You what?—Yeah, I read about that!—Well, that becomes a question for INTERNAL REVENUE.—Yea, I know that becaues this is one of the things I wanted to tell you BOBBY. I've been served, I've been given a summons by the IR Special Agent, same as EDDIE was given, you know, to bring checks, etc, etc. The SA is coming down on the 24 to the 28th and I wanted you to know I'm gonna take the same attitude although I've got everything, I've got all the checks, but I'm not gonna waiver my priviledge.—I didn't hear you BOBBY, ———.—Yea.—Theres no between you and I, they want everything, they want the stuff that I sent to SERV-U which constitutes my investment. They have that! They've gone over that with a fine tooth comb, they want everything pertaining to that, the bank in OKLAHOMA which they have and the only other personal thing which I gave to FRED's Attorney was that 22,500 which I gave you, see. But I'm gonna give them nothing and I just wanted you to know the attitude I'm gonna take.—Well, I don't know, I don't think I'll even need representation because—if they want it they can subpoenae the bank—the bank statements. You see what I mean, but I can't waiver my rights.—You see, now, in this 22 five which you got, this is a matter for your accountant to—FRED's accountant called me on this item too, you see, they probably got it marked down as income or maybe a payoff where you are concerned. I don't know how they could interpret it, but I did issue that check and you did deposit it, see

and of course I got a letter from you substantiating—you sent it to EDDIE who in turn sent it to me substantiating the —— (Purchase) of the —— stock etc, etc, you see. By the way, what are we gonna do about that BOBBY?—And that will be around the first of APRIL?—I see?—If it is going to be delayed any further, would you have any objections if I was to take the bank's position?—You see? In other words—lets review for a moment BOBBY, you've got this stock ah—the WASHINGTON stock plus another item and if I was to go in there and pay off your debt which is close to \$29,000.—I see.—Well, of course I wanted to expedite it as quickly as possible, however, I'll tell you what we do BOBBY, lets let this be a firm situation. If by the first of the month, you know, the time *saving*, this thing has not been exercised, I'll exchange places with the bank and leave the item open that you can exchange places with me, you see, here is a motivation BOBBY, so that you can understand too. Its better in my hands for this reason, I don't know whats going to be ah—with, you know, they're going to rake you over the coals—this INTERNAL REVENUE, there could be jepardy assessments, everything could be impounded and of course I have a finantial interest. I wanted to safeguard my interest by—and then by doing that I'm safeguarding yours.—Alright, now, one other question, how are you—you see, I haven't spoken to FRED nor EDDIE. They happened to be busy and when EDDIE called up I'm not around either. What has ever happened on that conversation with FRED pertaining to your position in OKLAHOMA?—I see.—So you'll be out of OKLAHOMA?—But will you wind up with SERV-U? I don't want them to sell you out of SERV-U!—You'll still be in SERV-U.—You will have SERV-U free and clear?—Well, thats the thing that I was concerned about BOB because FRED frightened me when he said that they

were going to sell it under the hammer and so on.—Yea, I see what you mean. Of course you'll sell that MAJIC stock plus your OKLAHOMA—Oh, I see and then how about your OKLAHOMA stock?—What price did they put on it?—No, its about \$10 *plus* 26-75.—Well, thats that much more that you can—To get out of the bank. And if you do that, you wind up with your SERV-U stock free and clear and hell you can get that on your HOWARD JOHNSON in a minute.—Yea, I can understand that. Well, then, you're not in such bad shape. Alright then, we'll wait untill about the first of the month on this other thing and if nothing materializes by that time, I'll exchange places with the bank.—Alright BOBBY, I just wanted you to know whats going on around here.—Alright, so long.—Yea.—Well, I probably will, I probably will get to sit in there, but I—Yea.—Yea, well, I ——— ——— the man—the poorest client is the one that comes up without an attorney (Laughs) if a man wants to be his own Attorney he a poor—he's got a fool for a client (Laughing) Almost like the position that I took in WASHINGTON, the Attorney really did nothing. Its just the fact that he is there.—Yea.—I understand.—Well, I want to tell you this BOBBY, I got word, I just spoke to Ed about a week ago and he's got ah—inheritance tax problem and he's coming down, he told me then that he's coming down to see me and I've got to help him. Now, as to what extent I don't know nor does he know. You see, he's been that way—he's running between VEGAS and LA, the getting this—computing the net worth, you know, as a lawyer you know what they have to do. As of yesterday I understand he's been appointed as administrator and now its a question of how much he computed and how much he needs and then he's coming down to see me so ah—this again ah—is an unknown quantity here. He's looking to me for help

and you know what I would do to help him. So consequently I am not in—I'm just pinching pennys now until I get through with him.—He'll be down—he told me by the end of the month and thats why I also wanted to know that when I get through working with him whether I have to—I'll pick up the WASHINGTON situation or whether you'll handle it yourself. Of course I would prefer that you handle it—then it means it would make it a little easier for him.—Yea, ok Boy, so long. (Ter)

4/21/64

BS attempts to reach BOBBY BAKER in WDC at 305-7033

BS—Is TED DONOVAN there—alright I'll call him back (t)

BS calls WDC 305-7003 for BOBBY BAKER (while BS waiting to be connected discusses with BARTON UDELL the possibility of his phone being bugged. BS says its a strange thing but all of his transactions with BAKER have been legitimate and he wouldn't care if the entire FBI monitored his phone calls to BAKER. Discuss Sunday's article in Miami Herald re wire-tapping and microphone surveillance—both agree its a terrible state of affairs, etc.

BS connected with BAKER and following conv. ensues:

How are you boy? . . . say tell me whats doing with FRED, I havent heard anything—although I called and couldn't get him, I'm anxious to know . . . Yeah . . . well theres nothing here see and you would know . . . well thats only dollars—thats civil—well how about—. . . yeah but you mean they are pursuing it from the criminal angle . . . or get a suspended sentence with a fine and pay the fine—regardless its no good . . . yeah well as long as he's got that guilty rap over him its gonna hurt him . . . the dollars and cents thing is another thing—well I'm sorry to hear that

... well theres only one answer, he's gonna have to go bankrupt ... I cant see any other answer because I dont think he's got that kind of money ... well has he done anything as far as assigning that, remember we had that conversation here (Miami ... well if he was smart he would assign it to someone who could show a consideration, not just a dummy ... well thats too bad—what is doing with SERV-U? ... but theres nothing since we had that conversation ... well of course I'm gonna see EDDY—I'm leaving for New York today, and I've got to meet EDDY there, so it may be, since he's closer to the picture up there he might be able to tell me something but I thought that you might know—how about the hotel? Did you hire anyone? ... Did you open up yet? ... well how can you rent rooms and not be open? ... Oh, but you're getting revenue in? ... I see ... thats about all unless you got anything you want to tell me ... alright, now about that stock—whats the latest? ... thats it ... well of course that will help the position—then you will know tonight ... well the chances are that you might get a call from New York—uh—early tomorrow or the following day ... yeah and you'd like to get a report on whats going on out there (Vegas) ... well thats his opinion—or maybe he's just using it as an excuse—or if he just wants to lay the blame there, I don't know—maybe a combination of the two—but thats beside the point ... well now FRED was telling us something about getting GE (General Electric)—something about getting a couple of other spots, do you know anything about that, you said you spoke to him Sunday—his inference was to me in an earlier conversation that he was going to represent certain people in return instead of a salary he would get the Vending concession— Do you know anything in that direction—alright I'll probably speak to you in a couple of days from New York—take care of yourself (T)

6/12/64

LESTER SIGELBAUM and BEN arrive. BEN immediately places call to BOBBY BAKER in WashD.C.

—BOBBY—how are you? . . . Well listen Bob, let me make one thing clear to you so we'll understand—you know personally I think we have got along just swell—in all this business—I mean you know, we've had this SERVU difference (argument) I think that our association has been very pleasant—and I think I've been so far, now— . . . BOBBY this is not a question of getting the money now, I could have resolved that while we were in California—you see we could have even put this on part of that deal but we have to have everything stand on its own feet . . . well I'm glad you feel that way because I do too Bob—the only thing that perturbs me—I call a spade a spade—the thing that perturbed me was and I'll give it to you right now whether you had a hand in it or not—is that I called various times and I realize too that you are not just sitting around waiting for my call but one particular time I called—the girl I got through too—one girl, got through to another—then I get the word that you weren't there and sure enough—that you went away for four or five days and sure enough Eddy calls and he is told that you're in town but you're not in your office—this is just not nice BOBBY . . . yeah the INTERNATIONAL . . . oh yes . . . hey listen Bob while I've got you on the phone, we've resolved this thing and I'm glad I've cleared the air with you because I want to tell that when I get into Washington I'd like to call you and have you buy me lunch—now you did say that you did take care of it and you mailed the check? . . . on the basis of what our original understanding was which is alright—has nothing to do with the stock and if you want me to send you a satisfaction

then send that along too . . . yeah well I think for your protection BOB, now listen to me, I'm no lawyer but I'm not completely stupid, now if you have sent me a complete check, this is for your protection, and it ever gets around that this stock was really not yours, you understand, and somebody could distort it and I think for your protection you ought to have a satisfaction—I'm looking to protect you now . . . theres no hurry, this is only in the event that somebody who means you harm gets wind of something . . . as if I lent you the money, thats the way it was supposed to be. Now BOBBY, one other thing, and this is none of my business but you just take it for what its worth, for some reason or other I gotta call from a guy named DONOHUE (ph) now follow me—I dont know him—The only thing I ever knew about DONOHUE is that one time FRED (BLACK) called me and asked me to call this DONOHUE and make an appointment for him, that FRED was coming down, I have never met him, my entire association with DONOHUE was that telephone call I made for FRED, to set up and appointment, well it seems like FRED hired him I dont know for how much or what, I just set up an appointment and it seems like you fired him, well anyhow, hear me out BOB—I dismissed this thing completely until one day I got a letter—you got a letter and I got a copy of it, this was threatening and if its one thing I dont like its threatening letters—then he called me, he said he called me, he thought I was still in SERVU—I made it very clear to him that I did not employ you, if FRED did then thats another thing, but I'm sure if you approach this thing with MR. BAKER and if you were hurt in any way you ought—you'll resolve it—I said just dont go off and . . . well he could do you a lot of harm BOB, thats what I'm trying to tell you . . . yes . . . yeah I think he was very stupid . . . yeah

... Well Bob, I think it's good, you see, he asked me (Laughs), you know, point blank ah—in effect—I had a copy of the same letter you got, you know—which was—and I told him that was not very smart, I says you could sit down and you can talk this thing over, the amount of money involved is negligible and I says if there's been any harm done or if FRED actually hired you—he says well you know he did. I says I don't know that he did. I says if you are going to sue on any basis—you subpoenae me as a witness—I said sure, I says I can only do is tell the truth and the truth is that I did call you and I did know that FRED intended to negotiate your employment, but as to the actual employment—I says I was not present—I know nothing about it, but—... That's right, but—now if you want my opinion Bob, this you can take—do as you like about it. My opinion is I think you'll give them a pretty good lashing and I think there is merriit to what you say, but don't forget that your name is BOBBY BAKER, you understand that? And you understand how this stuff can be slanted and I can tell you this, although you'll not be paying for a shakedown you'll get halftruths in the newspapers and here is a poor fellow that has been made to quit his job—that was sent down to that hotel and now you give him a good—(Obs). Not—... BOBBY, I did not say that! I did not—I'm just—do I have to remind you how newspapers will slant anything. Has there been any business any cleaner that you and I—I put my money in SERV U yet I know how—you know how it was slanted. (. . . When I went and asked for—my Attorney asked me to get a ah—Ed ah—WILLIAMS ah—suggested that I wait for a subpoenae, you were there. I have to follow my Attorney's advise. Well, did you know that the Florida newspapers had me as a fugitive from justice??? ... Well—well, but I mean

you can't just stop these things and they— . . . and my advise to you— . . . I'm not suggesting that you do— . . . Well, give him some severance pay and get a release! That's what you do even if you have to stand for something because your name is BOBBY BAKER. If it wouldn't be BOBBY BAKER you send him out on his ass and that's the end of it. . . . Then get rid of him cause—now one last thing I want you to do for me Bob, and this is very simple; I don't know what consummated—you know, you make your deal with EDDIE when we closed out SERV U deal out, and anything that was done is satisfactory to me—there's no question about. Now, at that time I was under the impression we were suppose to get that money that we laid out for HANCOCK, then I understand or felt that our Attorney thought for tax reasons it would be very good and he changed the deal, so, which meant that we did not get paid for HANCOCK. . . . Now, here is what— . . . I know you promised me that Bob, but here is what I want — . . . Not—I'm not asking for the money Bob! I'm not asking—all I want—I want the same GD note that he gave Ed LEVINSON! This is what I'm trying to ask. Look, listen, if arrangements was made that we're to get it next month next year—or whenever we get it, you understand, that's satisfactory! . . . Everything is satisfactory! But I—I'm entitled to the same damn note. . . . That's—and I'm not arguing the point and I'm not saying look BOBBY, you make it good today, I'm not asking you to. I will abide by what the deal was made in CALIFORNIA. See? But I don't want to be without the—the guy owes me the money! . . . You see, and there's another reason, in case anything ever happens at least it gives me the nucleous of a write off, you understand? So, will you please get HANCOCK to give me the same note and he can date it any time you like after the time it was agreed upon in Los Angeles

and that's the last piece of business and—that we have up to this moment. And I wish you a lot of luck BOBBY and thank you very much. When did you mail the check? . . . Alright then. . . . Did you talk to Ed? . . . Yea. (Alright, did you send him his check too? . . . Right, ok, Bob, nice talking to you. (Ter)

7/30/64

BS receives a call from BOBBY. (First sentence not on tape and not recalled.)

LEE, well they got rid of their—EDDIE TORRES (ph) runs the restaurant in the FREMONT, you see. Now, he is the boss of that department, you know. Now and he is one of the owners, consequently he isn't going to get himself out of a job, but I am going out next week and I will inquire. BOBBY, what are you doing? . . . Yes, I know, I went in there a couple of times and they told me that you left—and you were supposed to go somewheres else. . . . Yeah, you cannot go in on a *leap* year. (You don't belong in anything to buy, BOBBY. You just get into a place like—and run it. . . . Well, I am going out to the coast next week, BOBBY and if there is anything I will ask the boys. . . . I understand, but being as I had not been out there in a long time, I would not know, but I am going next week. Wait a minute! . . . All right, what is it? Yeah? . . . 759-5507. . . . Well, I don't think it will stand up. I think they will get a reversal. (Yeah, how is he taking it? Bob, have you seen him? . . . Yeah, its a headache, its going to cost him a lot of money. . . . So, he's lucky he's got the fortune for it to cost him. . . . It will be a couple of years before anything is done anyhow. . . . A lot of switching around. Thats the way everybody feels about it. . . . All right, nice talking to you, BOBBY. So long. (t)

12/30/64

BS from BOB—BOBBY BAKER

... The three payments that I have received or that EDDIE and I have received, were for regular specific amounts—\$7,500. Now in that amount there has been interest. (The interest was included. Now, for my tax purposes are your people to draw up a statement like a— Ask your accountant, this will take up until the end of December. For everything that you have paid me so far—I much I have received in interest and how much was applied against the loan.— We got to be careful BOBBY— Of loan—Well you are going to have to do that, because I want to get that into my tax return. Will you take care of that?— You write the letters signed by me no doubt then we'll contact us. As I said, as I'm concerned verbally, it's alright with me. But I don't want it quoted in the letter!— Outline your problems— OK BOBBY and everything will work out alright— Now, what is this I hear, there's a Grand Jury convened.— Well, Jezz I feel discriminated against. (How is it that I haven't been called before the Grand Jury (Laughing)— No don't do me any favors BOBBY, I won't ask you to get a parking ticket fixed (laughs)—(Ter)

Defendant's Motion Exhibit 3**DATES AND VERBATIM ENTRIES OF CONVERSATIONS IN WHICH
ROBERT G. BAKER WAS A PARTICIPANT IN
THE FREMONT HOTEL**

11/1/62

(Conversation in which Robert G. Baker is a participant—other conversant appears to be Ed Levinson)

How are you, Bobbie? ph (Talk of watch crystals) 8:45 tomorrow night— You're coming on TWA. Okay Yeah, I know Benny is there. Right now I'll put you into the Sands. I'll get a hold of Clift—I'll call him right now. Well, Charlie won't be there—his wife is being operated on. I'll have a room there for you and your wife, Carol. You're going to stay through Sunday? Okay, Buddy.

12/31/62

(Conversation between Ed Levinson and Robert G. Baker)

Ed answered and spoke to Bobbie (Baker) ("Good'. My brother is over there." "I want to keep this action going." Ed mentions the ZICK & SHARP Architect at 1806 South Main Street—this is in reference to a deal where Zick & Sharp are apparently doing the decorations for an inauguration party and each plate will cost one thousand dollars.

On 12/31/62 the informant advised that EDWARD LEVINSON received an incoming telephone call from ROBERT BAKER from Washington, D.C.

L: Hellow, put him on. Hellow BOBBY you (Obscene) when I call you, you never answer my call. Well good my brother's over there. Yes, that's right. I've got a brother over there and I'd like to

keep him in that, you know. Let me know, keep me informed and I'll tell you. When's the inauguration? Well that's fine. This is surprising news to me. In regard to the architects here, he said it's O.K. Zick and SHARP. I'll give it to you in a minute. I'll look it up in the phone book. 1806 South Main Street, Las Vegas, Nevada, Zick and Sharp Architects. He told me they wrote in to the general office of the GAO, I don't know what they call it. GSA. In regards to the one here in Las Vegas. I said, well if you deliver on this one I'm sure they can help you on this other one. I said, all you have to do is (Pause) I says, he committed himself to buy the 8 tickets. I said, on your next job I don't know what they will want. I said, Carson City. He said Reno. Carson City, I see. O.K., you let me know all about it. The inauguration is when? Well I've never been to the Dominican but I'd be glad to go. Well all I'm interested in is my brother. Well he could be the bag man for them. You know he knows the business.

3/31/63

(Conversation between Ed Levinson and Robert G. Baker)

Ed back in office.

Ed talking to BOBBY—(cut 51)

hello—ye—how are you Bob—what's the matter—wonderful—fine—good—on the phone—well that's that—what did they think about that?—well, who or what do you want to start working on it, I can have the people make the contracts—well, I'll make a call to MIAMI, tonight and find out and call you back Monday—oh, ye—where are you at—well, were you over their—oh, I—fine I didn't know you went over—ye—he got indicted—well, he say he didn't see

any, but suppose to see you know and in the sat's paper—well, that's good then—no, their would be any out here—on—well that possible around, uh—MISSOURI they might—so my brother meet with these people, well fine. Listen, on the CIGARETTE THING, well they will have to go over and see who DEIGO (PH) or what—you will set up the appointment—uh—well, if diffrent people go, lets not let one thing mess with the other, you understand, well I'll make the call and will let you know who the people are going over, what & when—alright now what happing with my cigars, any luck—oh, he did—uh—that the only on you went to—he can get it in at TAMPA*** THEY want let them come in—oh—tha's diffrent, they confiscate take them when they come in, you know—I hope not—uh—well not that I know of why—yes—first I'V heard it—well, BENNY (ph) if either was, I would have heard from BURTON or somebody—hell, I don't know a dam thing about it—yes, I was in Tuesday and saw FRED and they were working like crazy, Tuesday. their—uh—ye—wonderful, you must be knocked out—well alright now—oh, I see—let me ask you BOBBY, uh it will be a good time to call you at home tomorrow night or what—well, I don't think I will be able to call you tonight, well ok—I'll get the info.—get on the guy about my cigars—ok. (end cut 56 reviewed)

On the same date, LV 90-C* advised LEVINSON received an incoming call from BOBBY who is believed to be ROBERT BAKER, secretary to the majority leader of the United States Senate.

LEVINSON: Hello, how are you, Bob, . . . what's the matter? Wonderful, fine, good . . . on the phone . . . well that's, that . . . what did they think about that? Well, who or what do you want to start working on it, I can have the people make the contacts

... Well, I'll make a call to Miami tonight and find out and call you back Monday ... oh, yes, ... where are you at ... well, are you over there ... oh, I ... fine. I didn't know you went over ... He got ... well, he says he didn't see any, but supposed to see to, no and in the Saturday paper ... well, that's good then ... no, there wouldn't be any out here ... no ... well that's possible around Missouri they might ... so my brother met with these people. Well fine. Listen, on the cigarette thing, well, they will have to go over and see who? DEIGO (phonetic) or what ... you will set up the appointment ... well, if different people go, let's not let one thing mess with the other, you understand, well I'll make a call and will let you know who the people are going over, what and when. I hope not ... Well, not that I know of, why ... yes, ... first I've heard it well, BENNY (phonetic) if either was, I would have heard from BURTON (BRYANT BURTON, Los Angeles attorney) or somebody ... (obscene), I don't know a damn think about it ... Yes, I was in Tuesday and saw FRED (FRED BLACK in Los Angeles) and they were working like crazy, Tuesday. There ... yes ... wonderful, you must be knocked out ... Well, alright now ... oh, I see ... Let me ask BOBBY, will it be a good time to call you at home tomorrow night or what? Well, I don't think I'll be able to call you tonight, well, oh, I'll get the info.

Defendant's Motion Exhibit 4

November 3, 1966

William Bittman, Esquire
United States Department of Justice
Washington, D. C.

Re: United States v. Baker
Criminal Case No. 39-66

Dear Mr. Bittman:

In accordance with our conversation this morning, I am handing you a copy of a subpoena to which is annexed a list of persons whom we feel the Government should produce in connection with the motion to suppress in the above-captioned case. It is understood that you do not feel that we are entitled to the production of all of these persons but that you do agree that we are entitled to have produced the monitoring investigative clerks and such agents of the FBI who overheard conversations in which Baker participated, or at which he was present, and the case agents to whom they reported. It is our understanding that you will have all of those persons available for interrogation on November 15, or as soon thereafter as the motion to suppress is heard. At such time we shall seek the Court's guidance with respect to the production of other persons called for in the subpoena and we will make no point of your failure to have them present at the time that the hearing begins.

Very truly yours,

EDWARD BENNETT WILLIAMS

Subpoena to Testify

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal Case No. 39-66

UNITED STATES OF AMERICA

v.

ROBERT G. BAKER

To the persons named on the attached list, being agents and employees of the Government of the United States, c/o William O. Bittman, Criminal Division, Department of Justice.

You are hereby commanded to appear in the United States District Court for the District of Columbia, at 3rd & Constitution Ave. N.W., 4th Floor, Courtroom #8, in the city of Wash., D. C. on the 15th day of November, 1966, at 9:00 o'clock A.M. to testify in the above-entitled case.

This subpoena is issued on application of the¹ defendant. November 2, 1966.

EDWARD BENNETT WILLIAMS

Attorney for

defendant

Address

ROBERT M. STEARNS,

Clerk.

By ! ! ! !

Deputy Clerk.

¹ Insert "United States," or defendant" as the case may be.

LIST OF INDIVIDUALS TO BE PRODUCED BY THE GOVERNMENT

1. *FBI—Las Vegas*

- (a) Dean Elson
- (b) M. B. Parker
- (c) Robert Lee
- (d) Agents in charge of investigations concerning the Fremont Hotel, the Dunes Hotel, the Thunderbird, the Sands Hotel, and Cliff Jones
- (e) All monitors who monitored conversations involving Baker whether Baker was present or not.
- (f) Las Vegas agents making reports concerning Baker

2. *FBI—Miami*

- (a) Agent in charge of FBI office
- (b) Agent in charge of investigation of Benny Seigelbaum
- (c) All monitors who monitored conversations involving Baker, whether Baker was present or not
- (d) Agents filing reports with respect to Baker

3. *FBI—Washington*

- (a) Agent in charge of metropolitan area
- (b) Agent in charge of investigation into Fred Black
- (c) All monitors who monitored conversations involving Bawer whether Baker was present or not
- (d) Agents filing reports with respect to Baker

4. *FBI—Headquarters*

- (a) Agents who held custody of eavesdropping material on Baker received from Las Vegas, Miami, or elsewhere

- (b) Agents who used this material to prepare reports of any kind on Baker
- (c) Agent in charge of supplying electronic equipment
- (d) J. Edgar Hoover

5. *FBI—Bittman*

- (a) Agents who wrote reports used at any time by government agencies investigating and preparing the Baker case

6. INTERNAL REVENUE SERVICE

- (a) All agents in charge of investigation of Baker returns during the last 5 years
- (b) All agents filing reports on Baker during the same period
- (c) The agent in charge of Las Vegas and the agent in charge of investigating Cliff Jones

Government's Motion Exhibit A

[caption omitted]

AFFIDAVIT

I, Austin S. Mittler, being duly sworn, do hereby depose and say:

- (1) That I am a Special Attorney for the United States Department of Justice and an Attorney for the United States in the case of *United States v. Robert G. Baker* (Criminal No. 39-66).
- (2) That I have read and examined the motion to suppress filed by the defendant in this case, Robert G. Baker, and the allegations which are made regarding electronic surveillance conducted by the Federal Bureau of Investigation at various locations in Las Vegas, Nevada, Miami, Florida and Washington, D. C.
- (3) That I have conducted a review of the logs which were submitted to me by the Federal Bureau of Investigation and which have been submitted to the Court. (See the attached memorandum from the Director, Federal Bureau of Investigation, to the Acting Attorney General dated November 7, 1966.)
- (4) That, with respect to logs designated as Las Vegas file 92-826, Las Vegas file 92-703, Las Vegas file 92-461, Las Vegas file 92-704, Las Vegas file 92-706, I have found no record of any conversation in which the defendant, Robert G. Baker, was a participant or at which he was present.
- (5) That, with respect to logs designated as Las Vegas file 92-739, Miami file 92-966, Washington Field file 92-699 and Washington Field file 65-3731, they do contain records of certain conversations in which

Robert G. Baker was a participant or at which he was present. I have submitted to the Court with these complete logs verbatim copies of the records of conversations in which Baker was a participant or at which he was present.

- (6) That with respect to the allegations made by the defendant regarding electronic surveillance at the Thunderbird Hotel, the home and law office of Clifford Jones, the home of Robert G. Baker, the law office of Robert G. Baker, an apartment rented in the name of Robert G. Baker at 308 N Street, and the Capitol Hill office of Robert G. Baker, I have personally made appropriate inquiry and have been advised officially that at no time has there ever been any electronic surveillance conducted by the Federal Bureau of Investigation at any of these locations. (See the attached memorandum from the Director, Federal Bureau of Investigation, to the Acting Attorney General dated November 7, 1966.)
- (7) That, with respect to those conversations (referred to in paragraph 5 of this affidavit) in which Baker was a participant or at which he was present, they were never used by the Government to secure evidence or any leads to evidence which will be presented at the trial of this defendant.

Austin S. Mittler
Special Attorney
Department of Justice
and Attorney for
the United States

Subscribed and sworn to before me
this — day of November, 1966.

UNITED STATES GOVERNMENT MEMORANDUM

Date: November 7, 1966

To: The Acting Attorney General

From: Director, FBI

Subject: UNITED STATES v. ROBERT G. BAKER
CR. No. 39-66

In accordance with a request made by Mr. Fred M. Vinson, Jr., Assistant Attorney General, this Bureau has furnished to the Criminal Division of the Department of Justice, the logs of all microphone surveillances, where such existed, monitored by personnel of the FBI at the specified Las Vegas locations set forth in the defendant's motion to suppress, as well as those logs containing conversations at which defendant Baker was present or in which he participated in Las Vegas, Nevada; Miami, Florida; and Washington, D. C.

Baker's conversations were never covered by electronic surveillance by the FBI at any other time or place.

This review revealed that the only logs containing conversations in which the defendant participated or at which he was present are those referred to as Las Vegas file 92-739, Miami file 92-966, Washington Field files 92-699, 65-3731, as set forth in the affidavit of special Departmental attorney Austin S. Mittler.

At no time has the FBI maintained any type of electronic surveillance at any of the locations set forth in paragraph six of Mr. Mittler's affidavit as alleged by the defendant.

1—The Deputy Attorney General

1—Mr. Fred M. Vinson, Jr.

Assistant Attorney General

Government's Motion Exhibit B

[caption omitted]

AFFIDAVIT

I, Austin S. Mittler, being duly sworn, do hereby depose and say:

- (1) That I am a Special Attorney for the United States Department of Justice and an attorney for the United States in the case of *United States v. Robert G. Baker* (Criminal No. 39-66).
- (2) That during the investigations conducted by the Federal Bureau of Investigation and the Internal Revenue Service into alleged criminal activities on the part of Robert G. Baker, it was discovered that Baker made substantial cash investments in the latter part of 1962 in the Carousel Motel, of which he was a partner.
- (3) These investigations further revealed that during the month of November 1962, Baker expended in excess of \$45,000 cash in the Carousel Motel and another parcel of property, both located in Ocean City, Maryland.
- (4) That the Federal Bureau of Investigation and the Internal Revenue Service investigations were unable to ascertain the source of these funds which Baker expended in November 1962.
- (5) That on or about July 20, 1965, I received a telephone call from John Nicoll (a former Department of Justice employee who at the time of this call was employed as an attorney with the office of the Comptroller of the Currency) and was informed by Nicoll that he was told Robert G. Baker had received \$100,000 in cash in the latter part of 1962 from persons associated with the savings and loan industry in California.

- (6) That after July 20, 1965, I conferred with John Nicoll again and received additional information from him with respect to the \$100,000 cash which he heard Baker had received in late 1962 from the savings and loan industry in California.
- (7) That commencing on or about September 14, 1965, the Grand Jury heard witnesses and subpoenaed documents regarding this alleged \$100,000 cash received by Baker.
- (8) That as a result of the evidence which the Grand Jury inquiry developed, it was recommended that Baker be indicted for violations of 22 D.C. Code § 2201, 22 D.C. Code § 2203 and 18 U.S.C. 2314 (Counts 3-7 inclusive).
- (9) None of the evidence which will be presented at the trial of this defendant, or which forms the basis for this indictment, was obtained from any improper source.

Austin S. Mittler
Special Attorney
Department of Justice
and Attorney for
the United States

Subscribed and sworn to before me
this — day of November, 1966.

Government's Motion Exhibit C

[caption omitted]

AFFIDAVIT

I, Joseph R. Rosetti, being duly sworn, do hereby depose and say:

- (1) That I am a Special Agent assigned to the Intelligence Division of the Internal Revenue Service.
- (2) That on August 30, 1963, the Internal Revenue Service received an anonymous letter which contained allegations of widespread financial transactions by Robert G. Baker, then Secretary to the Senate Majority, United States Senate.
- (3) That this letter of August 30, 1963 was transmitted to me on September 18, 1963, with directions from the Chief of Intelligence Division, Baltimore, Maryland, to conduct a preliminary evaluation of this matter.
- (4) That commencing September 18, 1963, I did conduct a preliminary evaluation of the available information; that is, Baker's income tax returns, the allegations contained in the letter which the Internal Revenue Service had received on August 30, 1963, together with the continuing disclosures in the news media of Baker's financial activities.
- (5) That on October 29, 1963, I initiated an Intelligence Division investigation of Robert G. Baker.
- (6) That from October 29, 1963 to the present date, I have been the agent in charge of coordinating the Intelligence Division investigation of Robert G. Baker.
- (7) That as a result of the evidence developed in the course of my investigation, it was recommended that criminal proceedings be instituted against Robert

G. Baker for the years 1961 and 1962 for wilfully attempting to evade or defeat payment of part of his and his wife's income taxes in violation of the Internal Revenue Service Code of 1954, Section 7201 (Counts 1 and 2).

- (8) That the investigation which I conducted was the regular and usual investigation which the Intelligence Division performs. The evidence was developed through third-party witness interviews and the examination, review and evaluation of appropriate bank, corporate and other financial records.
- (9) That all of the leads which I received, from which I obtained the evidence of a wilful attempt by Robert G. Baker to evade and defeat payment of part of his and his wife's taxes for the years 1961 and 1962, were normal investigative leads.
- (10) That at no time during the entire investigation of Robert G. Baker which I conducted was any electronic listening device of any nature employed by me or by anyone who assisted me in this investigation. None of the evidence, or any leads thereto, was predicated on information obtained from any improper source.

Joseph R. Rosetti
Special Agent
Intelligence Division
Internal Revenue
Service

Subscribed and sworn to before me
this — day of November, 1966.

Government's Motion Exhibit D

[caption omitted]

AFFIDAVIT

I, William O. Bittman, being duly sworn, do hereby depose and say:

- (1) That I am Special Attorney for the United States Department of Justice and chief prosecutor for the United States in the case of *United States v. Robert G. Baker* (Criminal No. 39-66).
- (2) That in my capacity as Special Attorney and chief prosecutor I was assigned the duty and responsibility of assisting a Federal Grand Jury sitting in the District of Columbia in its investigation of alleged criminal activities in which Robert G. Baker was involved.
- (3) That, in the discharge of this responsibility, I interviewed Wayne L. Bromley, a known associate and long-time friend of Robert G. Baker, on or about February 15, 1965 at the Department of Justice.
- (4) That, during the course of this interview, Wayne L. Bromley told me that commencing in 1963, and continuing into 1964, various corporations had made checks payable to him, Bromley, although the moneys therefrom were intended to, and did, in fact, go to Robert G. Baker.
- (5) That Bromley told me that the paying corporations included United States Freight Company, located in New York City, and First Western Financial Corporation, located in Las Vegas, Nevada, as well as two other companies, the specific names of which he could not recall at that time.
- (6) That Wayne L. Bromley further informed me during this conversation that it was part of the arrange-

ments he had with Baker for him, Bromley, to report these payments on his income tax returns as income to him and that Robert G. Baker would not report such payments on his own income tax returns.

- (7) That Wayne L. Bromley further informed me that pursuant to the agreement he had with Baker, he and Baker met in December 1964 and together prepared his, Bromley's 1963 income tax return.
- (8) That, as a consequence of the information which Bromley furnished to me during this initial conference, and others that followed, Grand Jury subpoenas were issued to the corporations Bromley had named, as well as to various individuals thought to have knowledge of these transactions.
- (9) That as a result of the information furnished to me by Bromley and his testimony before the Grand Jury, together with other evidence which the Grand Jury inquiry developed, it was recommended that Baker be indicted for violations of 18 U.S.C. 371 (Count 9) and 26 U.S.C. 7206(2) (Count 8).
- (10) That prior to the time I met with Wayne L. Bromley on or about February 15, 1965, I had no knowledge or any information of any of the matters referred to in paragraphs 4-7 of this affidavit.
- (11) None of the evidence which will be presented at the trial of this defendant, or which forms the basis for this indictment, was obtained from any improper source.

William O. Bittman
Special Attorney
Department of Justice
and Attorney for
the United States

Subscribed and sworn to before me
this — day of November, 1966.

[caption omitted]

Defendant's Motion for Production

The defendant, Robert G. Baker, moves this Court for an order requiring the government to produce the following record and documents in their possession:

1. Any and all files on Robert G. Baker created and maintained at the National Headquarters of the Federal Bureau of Investigation during the period January 1, 1961, and the present.
2. Any and all files created and maintained on Robert G. Baker at the Washington Field Office, the Los Angeles Field Office, the Las Vegas Field Office, the Los Angeles Field Office, the Oklahoma City Field Office, the Kansas City Field Office of the Federal Bureau of Investigation during the period January 1, 1961, and the present.
3. Any and all reports and memoranda mentioning the name of Robert G. Baker which were sent by the Federal Bureau of Investigation to the Attorney General, the Department of Justice, the Organized Crime and Racketeering Section of the Criminal Division of the Department of Justice, the Criminal Section of the Tax Division of the Department of Justice.
4. Any and all files maintained by the Organized Crime and Racketeering Section of the Criminal Division of the Department of Justice created and maintained on Robert G. Baker or mentioning the name of Robert G. Baker during the period January 1961 and the present.
5. (Any and all reports and memoranda of meetings between members of the Federal Bureau of Investigation and members of the Internal Revenue Service during the period January 1, 1961, and the present which took place within the jurisdiction of National Headquarters or the Washing-

ton Field Office of the Federal Bureau of Investigation and
in which the name of Robert G. Baker is mentioner.

Respectfully submitted,

Edward Bennett Williams
Peter R. Taft
1000 Hill Building
Washington, D. C. 20006
Attorneys for Defendant Baker

Memorandum in Support of Defendant's Motion to Produce

The defendant has moved for the production of certain specified files and records in the possession of the United States. The attached exhibits and testimony already received in evidence during the hearing on the motion to suppress provide the basis for the request and the good faith upon which it is made.

Testimony during the hearing on the motion to suppress of FBI agents involved in the unlawful monitoring of conversations in which the defendant was a participant has indicated that the defendant was specifically identified as an "associate" of individuals who were targets of the FBI's "Criminal Intelligence Program." These individuals, Black, Sigelbaum and Levinson, were, to the best of defendant's knowledge, on the Attorney General's Organized Crime list.

The attached exhibits are statements of the Department of Justice either directly or indirectly through the press. These exhibits set forth the organizational procedures followed by the Department of Justice in collecting and disseminating criminal intelligence information with respect to individuals on the organized crime list and on their "associates."

In view of the information contained in these exhibits and in view of the fact that many witnesses dealing immediately and directly with the subject matter of the monitored conversations appearing in defendant's Exhibits 1, 2, and 3 in evidence in the motion to suppress were called before the grand jury which returned the indictment in the above-captioned case, defendant believes that the documents requested in the motion to produce are directly relevant to determination of the motion to suppress.

For the foregoing reasons, the defendant respectfully requests that the motion to produce be granted.

[signatures omitted]

EXCERPTS FROM TRANSCRIPT OF NOVEMBER 15, 1966

38 The Deputy Clerk: This is the case of the United States against Robert G. Baker, Criminal Case 39-66.
The Court: Proceed, please.

Mr. Williams: The defendant is ready.

Mr. Bittman: Government ready.

Mr. Williams: Your Honor, I think perhaps the first order of business should be a formal identification for the record of the materials which have been turned over to the Court pursuant to its order of November 10, I believe.

The Court: Well, Mr. Williams, the Court has not concluded its examination of those materials and I am not in a position at this time to state for the record the nature and character of those records.

Mr. Williams: Well, I wondered if the government—

The Court: Say pursuant to your motion to suppress, the Government did request the Court in an earlier motion to examine certain transcriptions and the Court is in the process of examining those transcriptions with a view of making available all transcriptions that relate to Defendant Baker regardless of the particular transaction that may be involved.

Mr. Williams: I think at some point, Your Honor, it will be necessary for the record to identify with some detail the character of the materials turned over and from whence they came. I thought it would be an appropriate time to do that at the start of the hearing and I thought
39 that perhaps Government counsel could make that statement for the record at this point so that thereafter I could state for the record, on stipulation with counsel, what portion of those materials have been made available to the defense.

The Court: I believe, Mr. Williams, your moving papers related to certain electronic surveillance at a given location as result of which the Government filed its motion.

Mr. Williams: Yes, sir. Well, now, Your Honor, we have had certain materials turned over to us pursuant to the

Court's Order and I would like to have those marked for identification at this point.

I have Xeroxed copies of those, if you wish, Mr. Bittman.

(Conference between Mr. Bittman and Mr. Williams, not reported.)

Mr. Williams: May we have those offered in evidence at this point, Your Honor?

The Court: All right.

Mr. Bittman: The Government has no objection.

The Court: They will be received.

Mr. Williams: They will be marked as Defendant's Exhibit No. 1.

The Deputy Clerk: All of this is one?

Mr. Williams: Yes. You can staple them together if you wish.

The Deputy Clerk: Defendant's Exhibit No. 1 marked for identification.

Mr. Bittman: These are all No. 1?

40 (Conference between Mr. Bittman and Mr. Williams, not reported.)

Mr. Williams: Mr. Bittman has suggested that we make them into three separate exhibits. I suggest then, if the Court please, that the documents which are captioned "Dates and Verbatim Entries of Conversations in which Robert G. Baker was a participant in the business suite of Fred Black be marked as Defendant's Exhibit No. 1.

The Deputy Clerk: Defendant's Exhibit No. 1 marked for identification.

(Whereupon, the document referred above—Conversation entries—was marked Defendant's Exhibit No. 1 for identification.)

Mr. Williams: I suggest that the documents which are captioned "Dates and Verbatim Entries of Conversations in which Robert G. Baker was a Participant in the business

Suite of Benjamin Sigelbaum" be marked as Defendant's No. 2.

The Deputy Clerk: Defendant's Exhibit No. 2 marked for identification.

(Whereupon, the document referred to above—Conversation Entries—was marked Defendant's Exhibit No. 2 for identification.)

Mr. Williams: I suggest, if the Court please, that the final sheaf of documents which are captioned "Dates and Verbatim Entries of Conversations in which Robert G.

Baker was a participant in the Fremont Hotel," be
41 marked Defendant's Exhibit 3 for identification.

(Whereupon, the document referred to above—Conversation entries—was marked Defendant's Exhibit No. 3 for identification.)

The Court: Are those the three categories, Mr. Williams?

Mr. Bittman: Yes.

The Court: They will be received.

The Deputy Clerk: Defendant's Exhibit No. 3 marked for identification.

The Court: Received in evidence.

(Whereupon, the three sets of documents referred to above, previously marked for identification were received in evidence as Defendant's Exhibits 1, 2 and 3.)

Mr. Williams: I think if the Court please, at this time it is appropriate to have if we may a statement from Government counsel that all transcripts of conversations or portions of conversations in which the defendant was a participant or which concerned him which were picked up by electronic eavesdropping equipment or by wire tapping or by any means of electronic espionage have been turned over to the Court.

The Court: Mr. Bittman, do you care to make a statement as to the nature and character of the materials you have turned over to the Court?

42 Mr. Bittman: Yes, Your Honor.

The Court: (continuing) And to which Mr. Williams has been given access?

Mr. Bittman: At the outset, I'd like to state to Your Honor that pursuant to an earlier suggestion that I made I had prepared for the Court and for the Defendant a sheet of paper which will relate to Defendant's Exhibits 1, 2 and 3; and which states on the face of this paper the individual employees at the FBI who monitored these conversations, and with respect to the Fremont Hotel there are three in number; with respect to—And I also have stated the case agent who was assigned to that particular investigation.

With respect to Benjamin Sigelbaum, I have listed names of the monitoring agents, employees of the FBI. With respect to—That there are eight conversations.

With respect to Fred Black, I have listed the monitoring agents, and there are eleven conversations.

And to effectuate the purpose of this hearing, I will now submit to the Court a copy of this and a copy to defendant.

The Court: Now, Mr. Williams further questioned—

Mr. Bittman: I will respond to that, Your Honor.

The Court: All right.

Mr. Bittman: I will directly respond to that, Your Honor, in this way: That, for purposes of this hearing, the Government has submitted to both the Court and to the defendant

all conversations which were electronically monitored

43 at any time, at any place, with respect to any conversations which Robert G. Baker was a participant or at which he was present. And, I intend a little later, Your Honor, to file sworn affidavits and a statement from the FBI—I say to that effect.

The Court: All right.

Mr. Williams: As I understand that representation includes electronic espionage of the defendant Baker's conversations by any agents of the United States Government.

Mr. Bittman: I will not accept that characterization, Mr.

Williams. You heard my statement. I have nothing further to say.

The Court: Well, gentlemen, semantics probably.

Mr. Williams: Electronic eavesdropping by agents of the United States.

Mr. Bittman: Your Honor, I thought my statement was very unequivocal that these are all conversations the Government has in its possession which relate to, where Robert G. Baker was a participant or where he was present, which were electronically monitored.

I don't believe any further amplification of that statement is necessary.

The Court: I think, Mr. Williams, we are speaking in the same language. Perhaps you would characterize it one way and Mr. Bittman another, but it means the same thing.

Mr. Williams: Your Honor, in our motion for
44 discovery, which was filed herein and which is set down to be heard at a later time, there are two items which we called for which were called for because they are germane to this particular motion, namely, the motion to suppress evidence.

I direct your attention to items 20 and 21 under the motion for discovery, which was filed under Rule 16, 17(c), and we asked for at that time if the Court please, all electronic or mechanical recordings or transcripts of all or any part thereof of any conversation of the defendant made by any government agent without prior notice to and consent by the defendant.

Now, I think, if the Court please, that we are entitled to have that particular request passed on incident to this particular motion. And in its responsive papers although the Government acceded to our requests for items, No. 1 through 18, it resisted our request for Items 19, 20, and 21. 20 and 21 are highly relevant to the motion to suppress and so I would have to now ask, if the Court please, so that there will be no mistake on the record, whether we have now received, or the Court has received as requested

in Item 20 of the motion for discovery all electronic and mechanical recordings or transcripts of all or any part thereof of any conversation of the defendant made by any government agent without prior notice to or consent by the defendant.

The Court: Mr. Bittman?

Mr. Bittman: Your Honor, with respect to Item 21, which Mr. Williams—

Mr. Williams: (interrupting) 20.

45 Mr. Bittman: I am referring to 21. Clearly, he is not entitled to any of that equipment or paraphernalia as he characterizes it, and the Government will respectfully request the Court to deny that request at this time.

Clearly, it is not relevant to this hearing. The only issue at this hearing, if the Court please, is whether or not the conversations which have been turned over to the defendant can in any way—can the defendant in any way show a causal connection between those conversations and the evidence which forms the basis of this indictment. So, the government respectfully requests that it be denied.

The Court: What about 20?

Mr. Bittman: With respect to No. 20, I'd like to say two things. No. 1, that there is no case law which says that it is appropriate for a defendant to file a motion for discovery and inspection preliminarily to a motion to suppress and that on that basis, his request should be denied. At a later date and I understood the order of argument in this case was that statement later after this motion to suppress was heard that we were going to argue the motion for discovery and inspection and at that time if anything comes within the ambit of paragraph 20, the Government will submit it to the Court.

The Court: What do you understand paragraph 20 calls for, Mr. Bittman?

Mr. Bittman: Your Honor, what, as I read it I believe it calls for any particular record of conversation

46 which the Government has in its possession separate and apart from those which were electronically monitored by the FBI—

The Court: As Mr. Williams just read his request it seemed to me that it is the same material that has been offered and received in evidence, namely, defendant's 1, 2 and 3.

Mr. Bittman: Let me say this, Your Honor—

The Court: Is there any difference between the two?

Mr. Bittman: Yes, there is.

The Court: What is the difference?

Mr. Bittman: Because, with respect to No. 20, the Government does have in its possession certain information which relates to No. 20 which was not obtained without the consent of one of the parties which might be germane at the trial. And for the purposes of the motion to suppress, this should not be turned over. That is not to say that under an appropriate argument for discovery and inspection pursuant to Rule 16, that it could or should not be turned over at that time under the new rule as amended. However, for purposes of this hearing should not be turned over.

I respectfully suggest to the Court that he is not entitled to it and it is an effort again to get into certain items of Government evidence which he is not entitled to.

The Court: Well, Mr. Williams, we will adhere to the order that I discussed with you and Mr. Bittman yesterday. We will first proceed with the motion to suppress.

Mr. Williams: You see, that is why, Your Honor, I didn't want to get into a semantic game with Mr.
47 Bittman, and that is why I asked whether he was stating to the Court that he had turned over everything that had been called for in our motion to suppress and I suggest to the Court that we want to suppress this if it was obtained without notice and consent of the defendant and I think it should be turned over to the Court now incident to our motion to suppress because if it was ob-

tained without notice and if it was obtained without his consent then I suggest to the Court that it is suppressible under our moving papers.

The Court: You may be correct, sir, but I am going to first hear from you on your motion to suppress.

Mr. Bittman: I would like to suggest the Lopez case is controlling in this area, absolutely and unequivocally.

The Court: The Court's ruled, Mr. Bittman.

Mr. Bittman: Mr. Williams, do you have any statement to make before the witness is called?

Mr. Williams: Your Honor, at this time I would like to be heard, if I may, on our position with respect to the materials which have been turned over to the Court for an in camera inspection.

The Court: All right, sir.

Mr. Williams: (continuing) In connection with this motion. It is our position, if the Court please, that the defendant should have available to him and his counsel for his inspection all the materials that have been turned over to the Court and as has been indicated on the record we have received only a fragment of those materials. I
48 believe 34 pages of them. We rely, first of all, if the Court please, on the case of United States against Dennis, and I think the Dennis case has extraordinary applicability to the situation we have here.

The Court: Mr. Williams, you have already argued Dennis to me, have you not?

Mr. Williams: Yes, I did, Your Honor.

The Court: I think Dennis covers a different subject matter, namely, the Grand Jury transcripts for use in cross examination of the witnesses.

Mr. Williams: That is right.

The Court: Justice Fortas, in that opinion talks specifically about the Jenks Act. I don't think Dennis is authority for your proposition. You may go on to the next one.

Mr. Williams: I suggest to Your Honor, that it is a fortiori authority for our proposition. Because there the

Court held that these materials should be turned over to the defendant because only the defendant and his counsel was in a position to know what was germane and helpful to the position which he was advancing.

The Court: Of course, in the context of what the Supreme Court had before it in Dennis, I must agree absolutely but I think this is a materially different situation, and I don't think Dennis is controlling on that point.

Mr. Williams: In our situation, we have materials in the possession of the Government which have been
49 turned over to the Court which were not lawfully obtained materials such as Grand Jury Minutes and Jenks Act materials but which were the results of criminal activity on the part of agents of the Government and I use that term advisedly, Your Honor, because all the materials—

The Court: Mr. Williams, I recall your argument that you previously made on that subject and it is very fresh in my mind. I just don't agree with you. So, if you have any other cases besides Dennis that you want me to consider in connection with the motion you previously made with respect to this material I will hear from you.

Mr. Williams: Well, Your Honor, I think that just from the materials that have been turned over to us, that it can be demonstrated that the Court is not in a position to know what is germane to this motion and what is not.

And I say that with the utmost respect for the Court and not impertinent. I say to Your Honor that you just don't know enough of the factual background of this case as yet to make a judgment as to what may have led to evidence which ultimately found its way before the Grand Jury in this case and we who have been in this case for several years can make that judgment. If I may just give you an illustration from the document which has been numbered Defendant's No. 1 for identification. On page 9—and this is just one illustration—there is a recitation of a phone call, and there is a transcription which recites is

"Warren Barker (phonetic)" showing that it was a phonetic spelling by the monitors.—

50 "Is Warren Barker there?"

There is no Warren Barker that is known to the Defendant. He never called a Warren Barker, if the Court please. He called the man who is a key witness in this case, but that is disguised in these records because the Agent who heard missed the name.

But, Your Honor reading that you wouldn't know that it had a relevancy in relationship to this case, and I say that these pages are laced with instances of that kind, and I suggest that the documents which have been turned over to you are in all probability laced with instances of that kind.

The Court: Well, defendant called Warren Barker, whoever he may be. The Court is going to give you access to all conversations of the Defendant regardless of whom he called, and you can make your own determination as to what is material for purposes of your motion.

Mr. Williams: But, Your Honor, the problem arises in the fact that the defendant's voice is not always known to the monitor. And that on many occasions there will be conversations which were recorded wherein the defendant is not identified but there will be information there available as the result of an invasion of his constitutional rights from which leads were obtained, and I suggest to Your Honor that we should be privileged to point those things out to the Court before it makes a ruling.

51 But, I can see that Your Honor is not persuaded by this, and I don't want to tax your patience by belaboring it.

The Court: I think I understand your point, Mr. Williams. I will bear it in mind as I wade through these transcripts and other records.

Mr. Williams: Your Honor, in that case, we'd like to call the first witness who would be unknown to the defendant but known to the government, namely, the witness who

was in charge of the monitoring device in the Carlton Hotel on Mr. Black's suite.

Mr. Bittman: Your Honor, I would like to make a statement to the Court before we produce any agents to testify.

The Court: All right, sir.

Mr. Williams: Mr. Bittman, will you give me the name of the monitor?

Mr. Bittman: I gave you a list with all the names.

The Deputy Clerk: Do you wish that to be marked?

Mr. Bittman: No, it is for the information of the Court.

The Court: You may proceed, Mr. Bittman.

Mr. Bittman: Thank you very much Your Honor. Your Honor, I'd like to confine this statement to the legal and factual issues involved in this motion to suppress.

52 The defendant has filed an affidavit by a Peter Taft, an attorney, to support this particular motion. This affidavit contains many broad allegations relating to conversations which the defendant allegedly had with others at numerous unspecified locations, discussing numerous unspecified matters which allegedly are contained in the indictment.

The affiant does not specify any dates, particular conversations or how they relate to the indictment. I might add here, Your Honor, that the affiant does not indicate anywhere in the affidavit that he has ever talked with the defendant, Robert G. Baker, or that indeed Robert G. Baker has ever seen or adopted this particular affidavit.

Needless to say, the defendant himself has made no allegations either verified or not verified.

In order for the government to respond to these broad allegations by the defendant, it will be necessary to specify just what the allegations are. I believe that we can put these in five separate categories and bear in mind that these are an attorney's allegations and apparently not the defendant's.

The first category, Your Honor, relates to the Fremont Hotel, Sands Hotel, and the Dunes Hotel, all located

53 in Las Vegas. The affiant alleges that Baker can prove bugging, and that during certain unspecified periods of time Baker had meetings and telephone conversations during which certain unspecified matters were discussed referred to in the indictment.

This is the most solid allegation that the affiant makes.

Secondly, he contends that he can prove that similar bugging took place in the Desert Inn, the Stardust, and the Flamingo Hotel, also located in Las Vegas. However, this time he does not say that Defendant Robert G. Baker had conversations with anyone at those particular locations.

Third category, he alleges he can prove that a bug was found in the law office of Clifford Jones. However, again, he does not allege that Defendant Robert G. Baker had any conversations with Clifford Jones or indeed any conversations which specifically went into matters contained in the indictment.

Fourth category—and now we are getting weaker—he alleges that it is highly probable that other places were bugged, namely, Clifford Jones' home and the Thunderbird Hotel located in Las Vegas. Again, he doesn't allege that Defendant had a conversation with anyone in the Thunder-

54 bird. He doesn't say that Robert G. Baker had any conversation with Clifford Jones in his home or with anyone else. Needless to say, he does not say that any conversations related to matters contained in the indictment.

The fifth general category by the defendant is this: Now, he alleges on information and belief that it is highly likely that the Government bugged other locations, again, without specifying any locations, again without specifying any names; and again without specifying any particular conversations and here he says Miami, Florida, Washington, D. C., Robert G. Baker's home, Robert G. Baker's Law office, an apartment, rented in Robert G. Baker's name, and other unspecified offices and telephones used by the defendant.

Now, as a result of this affidavit, the defendant is representing to this Court that the entire 9-count indictment must fall because all of the evidence in this indictment is tainted. And, that a substantial portion of the case against him was a fruit of the poisonous tree.

Nowhere in this motion to suppress does he specifically allege that any piece of evidence in the Government's 30-page indictment was obtained illegally or was tainted.

The Government believes that the motion filed by the defendant is legally insufficient on its face. We have denied before and we will deny again that any part of
 55 the evidence which forms a basis of this indictment was obtained from any improper source either directly or indirectly.

At this point, Your Honor, I'd like to introduce an affidavit, a sworn affidavit. I will respectfully submit the original to the Court, copy to the defendant. The purpose of this affidavit, Your Honor, is to negate specifically the defendant's unspecific charges.

Mr. Williams: Your Honor, is this being offered in evidence?

Mr. Bittman: This will be offered in evidence.

Mr. Williams: I don't think we can receive an affidavit in evidence, Your Honor, of witnesses who are available to testify.

The Court: Well, Mr. Williams, I will hear counsel and I will hear you presently.

Mr. Bittman: This affidavit, Your Honor, in paragraph 6—and this is an affidavit by Austin S. Mittler, Special Attorney for the Department of Justice, and Attorney for the United States in this case, and paragraph 6 states as follows:

With respect to the allegations made by the defendant regarding electronic surveillance of the Thunderbird Hotel, the home and law office of Clifford Jones, the home of Robert G. Baker, the law office of Robert G. Baker, an
 56 apartment rented in the name of Robert G. Baker, at 308 N Street, and the Capitol Hill Office of Robert

G. Baker, I have personally made appropriate inquiry and have been advised officially that at no time has there ever been any electronic surveillance conducted by the Federal Bureau of Investigation at any of these locations; and there is an attached memorandum from the Director of the Federal Bureau of Investigation to the Acting Attorney General, dated November 7, 1966, to this effect.

The purpose of paragraph 6, Your Honor, negates again specifically the unspecific allegations by an attorney of Baker who has apparently never talked to Baker about these allegations.

This negates the fact that any electronic listening device was placed by the FBI at Clifford Jones' law office, Clifford Jones' home, The Thunderbird Hotel, Baker's home, Baker's law office, the apartment rented in his name, and other unspecified places used by him.

Now he has also alleged getting back to the categories I originally set out to the Court that the Sands and Dunes Hotel were places at which his conversations were illegally monitored.

For these purposes, the Sands Hotel will be designated in the affidavit as Las Vegas file 92-826, and the Dunes

Hotel will be designated Las Vegas file 92-703.

57 Mr. Mittler, in his sworn affidavit, in paragraph 4, states as follows: That with respect to Logs designated as Las Vegas File 82-826, Las Vegas File 92-703, Las Vegas File 92-461, Las Vegas File 92-704, Las Vegas File 92-706, I have found no record of any conversation in which Defendant, Robert G. Baker, was a participant or at which the Defendant, Robert G. Baker, was a participant or at which he was present.

To save time, Your Honor—the defendant also alleged in another category, however,—he inferentially suggests that his conversations were also illegally monitored at the Flamingo Hotel, the Stardust Hotel, and the Desert Inn, and that same paragraph specifically negates that condition.

Now, Your Honor, the logs which the Government has submitted to the Court pursuant to the Court's Order of November 10, 1966, and about which I am now speaking were a result of an important and major investigation by the FBI into organized criminal activity in the United States.

Baker was never the subject of any electronic investigation.

However, certain of his conversations were picked up coincidentally and tangentially to these major investigations; and as has previously been stated these conversations have been turned over to the defendant. They
58 relate to Fred Black, Benjamin Sigelbaum, and Edward Levinson.

These conversations are few in number and they have all been turned over to the defendant and to the Court. It is the Government's position bearing in mind the defendant's allegations in his motion to suppress that a reading of the conversations which were turned over to the Court and to the defendant show on their face that none of these conversations could possibly have led to any of the evidence in this indictment, and that the subject matter of the conversations turned over to the Court, and to the defendant are patently innocuous to any of the evidence in the indictment.

The conversations themselves negate conclusively that no possible connection could exist to any of the conversations in this indictment. The Government respectfully submits to Your Honor that under the Nardonne and the Coplon cases, which are the leading cases in this area of the law, that the Government satisfies its burden when it shows there is no causal connection between these conversations on their face on the incident indictment.

In Coplon 185 Fed. 2nd at page 636 Judge Learned Hand stated, that "Once the accused succeeds in establishing the fact that the Government has tapped his wires,

59 that the burden falls upon the prosecution to prove that the information so gained has not led directly or indirectly to the discovery of any evidence which it introduces."

We submit that these patently innocuous conversations turned over to the Court and the defendant themselves negate the possibility of any connection between those conversations, and the indictment, and therefore satisfy the Coplon standard.

In spite of the fact that we feel we have satisfied our burden legally, the Government intends to go forward at this time and affirmatively prove the independent source for the charges in the indictment.

We will do this, Your Honor, by submitting at this time three affidavits.

— (pause) —

Mr. Bittman: I think, for the record, perhaps the first affidavit that I submitted to Your Honor should be labeled Government Exhibit A, the second affidavit can be labeled Government Exhibit B for purposes of identification.

The Deputy Clerk: Government Exhibit A marked for identification.

(Whereupon, the document referred to above—Affidavit —was marked United States of America Exhibit A for identification.)

60 Mr. Bittman: Let the record indicate, Your Honor that these affidavits are being marked and I am tendering them at the same time to the defendant's counsel.

The Court: Very well.

The Deputy Clerk: Government Exhibit B marked for identification.

(Whereupon, the document referred to above—Affidavit —was marked for identification as United States of America Exhibit B for identification.)

Mr. Bittman: With the Court's permission, can I read Government Exhibit B into the record?

Mr. Williams: Your Honor, I don't think the proper way to introduce proof here is by affidavit form. I think there has to be testimony here offered in viva voce form of witnesses who are testifying from their own knowledge. I objected to the admission of these affidavits. I objected to the first one, and I object to the second one that has now just been tendered. They are both from the same affiant, Mr. Mittler, who is in court.

Mr. Bittman: Your Honor, there is absolute authority for this procedure and shortly I will cite to the Court a case which is absolutely in point with respect to this procedure.

That case is United States v. Frankfeld, et al. 100 Fed. Supplement, page 934, affirmed in 198 Fed. 2nd 679, 61 Fourth Circuit, 1952, Petition for rehearing denied, and certiorari denied, 345 U.S. 913.

If Your Honor would prefer it, I can go into the substance of this case before I go into these three affidavits.

The Court: I will receive these affidavits as part of your opening statement with the understanding that Mr. Williams, of course, is entitled to question those who made the affidavits.

Mr. Bittman: I would like to be heard on that, Your Honor. I believe that upon the conclusion of my argument I think that I can make a showing to the court that he is not entitled to—and because of the fact—because of the insufficient showing the defendant has made by this affidavit, and by the filing of these sworn affidavits by the Government which specifically negates his contentions that Your Honor could rule right now from the bench that the motion to suppress be denied. There is absolute authority in the Frankfeld case and, if the Court please, I'd like to read the Frankfeld case at page—

The Court: I am thinking of what Judge Learned Hand said in the Coplon case which you cited.

Mr. Bittman: Yes, Your Honor.

62 The Court: With respect to once a showing of electronic transcription has been made then the Government has the burden of establishing that there is no causal connection between those recordings and your indictment.

Mr. Bittman: Yes, Your Honor.

My position is that the Government has met the Coplon standard by submitting the conversation to the Court and the defendant. The conversations themselves negate—

The Court: I will read the Frankfeld case, and I am happy to have your statement in affidavit form as to the derivation of the information on the basis of which the counts were drawn. But, I am not going to preclude counsel from interrogating those sources. I think that is part of what is before the Court at this time. I am going to give counsel the opportunity of establishing that there is some causal connection if he can prove it. But at this point, as the Coplon case indicates, it is the Government's burden to show no causal connection. You disagree?

Mr. Bittman: Well, to a limited extent I disagree, Your Honor. The way the defendant if he is entitled to put witnesses on the stand to establish a causal connection, what he has to do is trace that particular conversation and show a causal connection between that conversation and our indictment.

63 Now, I submit if when these agents take the witness stand if he can so trace any of those conversations which lead to any evidence in our case obviously the Government cannot prove up independent source of that evidence. Then that portion of the evidence should be stricken. No question about it.

But to have the defendant file what is in my opinion a legally insufficient motion to suppress and then attack the Government's proof of independent source without even attempting to establish the causal connection between

those innocuous conversations and our indictment, I don't think that the law—

The Court: Mr. Bittman, what counsel was starting to do before you asked to make your opening statement—

Mr. Bittman: Yes, sir.

The Court: (continuing) Was to establish, or seek to establish the causal connection. He will certainly be given that opportunity.

Mr. Bittman: Your Honor, I respectfully submit to the Court that under the Frankfeld case, and others, there is authority that says not.

And I don't think it will take long, Your Honor—I would like to cite from this Frankfeld case where it says in the Frankfeld case—which I might add, Your Honor, was a case from District Judge Chestnut in Maryland,
64 a very respected judge.

The Court: What is the citation of Frankfeld?

Mr. Bittman: 100 Federal Supplement, 934; at page 936, the Court stated: "It is to be noted that the Court does not now have before it any definite or specific subject matter in the nature of evidence sought to be suppressed." This relates, specifically, Your Honor to my earlier statement of the unspecific allegations made by an attorney and not even by the defendant.

Now, the case goes on: "What the defendants apparently desire at this time is a preliminary trial for the purpose of discovery as to whether the Government has or intends to offer any such evidence."

The affidavit of the United States Attorney specifically denies that there is any such evidence to be offered.

Then, the Court analyzes the Nardone type cases.

The Court: I am not familiar with the Frankfeld case. Was that cited in your memorandum?

Mr. Bittman: Your Honor, I confess it was not.

The Court: But I will read it. Tell me about the facts in that case.

Mr. Bittman: Yes, Your Honor.

65 The Court: The Government conceded electronic transcripts in Frankfeld?

Mr. Bittman: All the defendants—There were several defendants in that case. It was a Smith Act case. The defendants all filed affidavits making general allegations. The allegations are set forth in the Opinion. And said that it is apparent that all the evidence which formed the basis of the indictment was the result of wire taps. The government attorney filed one affidavit, and in effect what he said was “We will not use any tainted evidence in this case.” That is the posture.

The Court: Did he concede that there had been electronic transcriptions?

Mr. Bittman: I might add that the Government attorney did not affirm nor deny that any such evidence existed.

The Court: That is why I question whether the Frankfeld case is the end of the road so far as we are concerned in this case because I think we have to deal with what we know the facts to be here, namely, that there were electronic transcriptions. The question is causal connection.

Mr. Bittman: Right. That is right. The government is not denying that certain such conversations exist. What we say is that the conversations themselves negate
66 any causal connection.

I mean if A and B are talking about betting on horses at the race track, I think on the face of that conversation you couldn't say that that related to someone accused of possessing heroin. That is what I am saying.

And, in addition to that, the Government wants to go further and submit three affidavits which will prove up its independent source.

This is what the Frankfeld case is, Your Honor. It will take one minute: “In the instant case after considering the affidavits of the defendants and of the United States Attorney in opposition thereto, it is my judgment

that no useful purpose would now be served by hearing the defendants' motion to suppress evidence of intercepted telephone communications either the original messages or other evidence clearly derived therefrom because there is an entire lack of definiteness in the defendants' motion as to what, if any, particular messages were intercepted and the affidavit of the United States Attorney is explicit and definite that no such evidence will be offered at the trial.

"In this situation it seems to me that the present effort of the defendants to examine government officials is merely an effort to discover what may be the government's
67 evidence in the case. While I find that the defendants' present motion to suppress must be overruled, the order to that effect will be without prejudice to any motion which may be filed by the defendants hereafter and before or at the trial if based on facts with regard to some particular intercepted message. I am not satisfied at the present time of the existence of such fact."

The Court of Appeals in the Fourth Circuit affirmed; certiorari denied.

Now, this I respectfully submit to the Court is what we have here. A close reading of the Taft affidavit, Your Honor, doesn't specifically allege anything. The government went forward in spite of that insufficient affidavit and submitted these conversations. Now, to say that if we file affidavits setting forth what our independent source of the evidence is that the defendant at that time can cross examine them to see if this is an independent source of our evidence I just don't think that is what the law says, and the Nardone case cautions against that and here's what the Nardone case says:

"Therefore, claims that taint attached to any portion of the Government's case must satisfy the trial court with their solidity and not be merely a means of eliciting
68 what is in the Government's possession before its submission to the Jury." A reading of this de-

defendant's motion to suppress, Your Honor, clearly indicates of its lack of solidity. And that is the reason why, Your Honor, why the Government went forward to submit these particular affidavits to show independent source.

These are not hearsay affidavits. And, I just don't believe that if the defendant cannot make any further showing to the Court at this time, then the basis of these affidavits and the basis of the conversations which we have turned over to the court and submitted to the court that these are all the conversations which exist, which relate to this monitoring, that that by itself, the Court at this time deny the motion.

And I would certainly submit, Your Honor, that if you say that certain FBI agents should testify, that we would respectfully request that their testimony be restricted, solely to a showing by the defendant if he can make such a showing that there is a causal connection between those conversations, and the indictment.

The defendant should not be permitted a broad fishing expedition here with the hope to net all the government's evidence under the guise of a motion to suppress.

At this time, I respectfully request the Court to
69 accept as Government's Exhibits, marked for identification for the purpose of this hearing—

The Court: Mr. Williams, do you wish to be heard on the affidavits?

Mr. Williams: How much have you offered, Mr. Bittman? Two?

Mr. Bittman: No, I have other affidavits but I never got around to them. There is no question, Your Honor, that the defendant has all the conversations. The government represents they have all of them. At the trial, if any testimony is elicited from that witness stand; if he can match up any of those conversations with that testimony; and I submit that he cannot, his rights will be fully protected

At this point, Your Honor, I would also like to submit an affidavit—

I should identify Government Exhibit B for identification, which is a second affidavit filed by Austin Mittler.

I now submit affidavit, which I respectfully request be marked as Government Exhibit C for identification, which is an affidavit by Joseph Rosetti, Special Agent, assigned to the Intelligence Division of the Internal Revenue Service.

The Deputy Clerk: Government's Exhibit C
70 marked for identification.

(Whereupon, the document referred to above—Affidavit—was marked United States Exhibit C for identification.)

Mr. Bittman: And, I'd like to submit another affidavit. I'd like to respectfully request the Court to have this marked as Government Exhibit D for identification, which is an affidavit by myself, William O. Bittman.

The Deputy Clerk: Government Exhibit D marked for identification.

(Whereupon, the document referred to above—Affidavit—was marked United States Exhibit D for identification.)

Mr. Bittman: I will submit copies of these affidavits to the Defendant. How many do you have? Your Honor, since they are marked as Government's Exhibits, I would respectfully request at this time one of two things, either to read them into the record or to have them offered into evidence.

The Court: You have offered them. I have agreed to hear Mr. Williams in opposition. Then, I will rule.

Mr. Bittman: Certainly. I believe, Your Honor,
71 that this procedure is appropriate under Coplon, under Nardone, under Frankfeld, and I have given the Court three citations in the Frankfeld case.

Thank you very much.

The Court: All right, sir. Mr. Williams?

Mr. Williams: Your Honor, I haven't had an opportunity to read any of these affidavits. I do object to the principle that we can conduct this hearing by virtue of an affidavit. We asked in our moving papers that we be accorded a hearing, and we offered to produce evidence of electronic eavesdropping, and we offered to produce witnesses with respect to that and to show a relationship to this case and when the Government responded to our moving papers it said in view of the defendant's motion for suppression of evidence, the documents filed in support thereof the Government believes that the defendant is entitled to a hearing as prayed in his motion.

So it comes as a great surprise at this point to find that the Government has changed its position and says that we are not entitled to a hearing and that they can dispose of this most important motion by the submission of four affidavits based entirely upon hearsay.

The Court: Mr. Williams, I am going to give you an opportunity of developing your proposition that
72 there was causal connection between these interceptions and the indictment.

However, I am going to receive for whatever it may be worth the affidavits of the Government.

This is simply a motion, of course, that is before the Court.

Mr. Williams: These are regarded, then, as in evidence?

The Court: Yes.

(Whereupon, the documents previously marked United States Exhibits A, B, C, and D for identification, were received in evidence—Affidavits.)

Mr. Bittman: Your Honor, the monitors and the case agents involved with respect to these particular locations, the Government has available. I knew they could not all testify at once and I do have available at the outset the case agents, with respect to the Fremont Hotel and the three monitoring agents, Robert D. Lee, Roger Dunphy,

Jack Rittenhour, who all monitored one conversation. There are three conversations in all.

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76 Thereupon,

Fred B. Black, Jr.

was called as a witness on behalf of the defendant, was duly sworn, and testified as follows:

77 Direct Examination

By Mr. Williams:

Q. Will you state your full name please, Mr. Black? A. Fred B. Black, Junior.

Q. What is your place of residence, sir? A. 4403 Government Street, Northwest, Washington, D. C.

Q. How long have you lived in the District of Columbia or the Metropolitan environs? A. About thirty years.

Q. Directing your attention, Mr. Black, to the year 1963, what was your occupation at that time? A. I was consultant to the aircraft industry, certain segments of the aircraft industry.

Q. Now, during that year did you maintain a suite at the Sheraton-Carlton Hotel? A. I did.

Q. Can you tell the Court please what the number of that suite was? A. In that year it was 438 and 40.

Q. And what did that suite consist of, sir? A. It consisted of a bedroom, a sitting room and bathroom. There were two halls.

Q. In the year 1963, did you know the defendant
78 in this case, Robert Baker? A. Yes, I did.

Q. Were you in business with him? A. Yes, I was.

Q. Would you tell the Court whether Mr. Baker used the Suite 438 in the Sheraton-Carlton Hotel? A. He used it a lot of the time.

Q. Specifically in February, March and April of 1963, would you tell the Court whether he used it with frequency or not? A. He used it with more than frequency.

Q. How often was he there, sir? A. I couldn't tell you how many times, but at least every other day, maybe every day, four or five days a week, something of that sort.

Q. Did he have a key to that suite? A. Yes, he did.

Q. Did he have your permission to use it at any time? A. Yes, he did.

Q. To your knowledge, did he use it for the conduct of his private business? A. I'm sure he did, yes.

Mr. Williams: I have no further questions.

Mr. Bittman: No questions.

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79 Thereupon,

Robert G. Baker.

defendant herein, was called as a witness on his own behalf, was duly sworn, and testified as follows:

Direct Examination

By Mr. Williams:

Q. State your full name, please? A. My name is Robert G. Baker.

Q. Where do you live, sir? A. 5115 Van Ness Street, Northwest, Washington, D. C.

Q. How long have you lived there? A. Three years, sir.

Q. Directing your attention to the year 1963, did you know Mr. Fred Black who just testified here? A. I did, sir.

Q. Were you in business with him? A. I was, sir.

Q. And were you in business in a company called Serv-U Vending Company? A. Yes, sir, we were.

Q. Were you an owner of that company? A. I was, sir.

80 Q. Was he an owner of that company? A. He was.

Q. Was Mr. Benny Siegelbaum an owner of that company? A. He was.

Q. Was Mr. Edward Levinson an owner of that company? A. He was, sir.

Q. Specifically directing your attention to the months of February, March and April of 1963, did you converse with Mr. Black in the suite at the Sheraton-Carlton Hotel which he occupied? A. Numerous times, Mr. Williams, as Mr. Black has testified, I used this suite for my private business relationships and if Mr. Black was in town I would see him say three or four times a day. If he was out of town, we normally talked on the telephone at least twice each day minimum.

Q. At that time were you in business with him? A. I was, sir.

Q. Did you have a key to that suite? A. I did, sir, for two to three years.

Q. Can you tell the Court during what years you had a key to that suite? A. To the best of my recollection, 1961, '62, '63, sir.

81 Q. And specifically with respect to the months of February, March and April did you have? A. Absolutely.

Q. During those months, how frequently did you occupy the premises? A. At least six days of each week when I would be in town, and since this is a busy period of the Congress, I would say except for possibly on a weekend, that I was here nine-tenths of the time.

Q. When you were there, Mr. Baker, during what parts of the day would it normally be? A. Pretty generally before I would go to my office I would stop by there, or two, I had many luncheons there, three, stop by after the Congress had adjourned or meet with Mr. Black when I was free.

As you know, Congress sometimes operates in the beginning by the Committee processes, and so when the Senate was not in session and I didn't have to be on the

floor, as a consequence I had more free time I could be downtown, and I spent a great amount of time there.

Q. While you were there, did you discuss your private business? A. Yes, sir; that was the purpose.

Q. I would like to ask one additional question:
82 Did you have permission to use that suite at any time that you chose? A. I did, sir.

Cross Examination

By Mr. Bittman:

Q. How many rooms were in that suite, Mr. Baker? A. There was a living room and a bedroom, as Mr. Black has testified.

Q. And how many of those rooms in the suite did you use? A. Both of them, sir, on many occasions.

Q. Was there a telephone in the bedroom? A. Yes, sir.

Q. Was there a telephone in the living room? A. There was two telephones in the living room. There was a private line—and that wiretap information there, you have it listed there, if you want it, we can make it a part of the record.

Q. I am only asking you how many telephones you had. A. I know. I am answering your question.

Q. You are not. A. There was two telephones, a private number and the hotel number.

Q. Those were in the living room; is that right?
83 A. The private number was in the living room and the hotel phone was in the living room.

Q. There was another telephone? A. There was a hotel telephone in the bedroom.

Q. Did you use all three phones? A. Yes, sir.

Q. Do you have any diary or log or any record of how often you were in Black's suite? A. I do not have a diary nor a log, but I'm sure that Mr. Williams can produce witnesses that saw me, like the waiters and bellboys.

Q. I am not contesting the fact that you were ever there. A. Yes, sir.

Q. I am asking you if you have any exact record which would indicate the times, the days that you were there?

A. No, sir.

Q. Did your secretary keep any such record? A. Not to my knowledge.

Q. With respect to telephone calls you made to and from Black's suite, is there any record available which would indicate what calls you made? A. I'm sure that—I noticed

84 one, that was an overseas call that I made. I used my credit cards. With the power that we have, I am sure from the telephone company we can get the credit card calls I made from there.

Q. Were all these long distance telephone calls you made from the suite of Fred Black charged to this credit card? A. I had several credit cards. I can't say specifically which one, but over a period of time I'm sure we can ask the telephone company for copies of my bill and we can see.

Q. Were all these credit cards on the Serv-U Corporation? A. No.

Q. What other credit cards do you have? A. I had my own private one.

Q. Made out to your name personally? A. Yes. I had one for the Carousel Motel, and possibly one other, but I'm not certain.

Q. To the best of your recollection, all the telephone calls that you would have made from Black's suite would have been charged to one of these specific cards, credit cards; is that right? A. Well, I had Mr. Black's authority to use his telephone when it related to our business. I didn't try to use it in something that was unrelated to our business.

85 Q. Was Black your business partner? A. Yes, sir.

Q. With respect to Serv-U? A. Yes, sir.

Q. In the early part of 1963? A. Yes, sir.

Q. Now, you used these telephones interchangeably. Did it make any difference whether you called from the bedroom or the living room? A. No, sir. It depended on where I was. If someone was in the living room in a meeting and I wanted to discuss something, I would go to the bedroom, or vice versa.

Q. Did you use one telephone more than another? A. I doubt it. I think it would be equal.

Q. What persons did you have conversations with in the suite of Fred Black, other than Fred Black, during the months of February, March and April of 1963?

Mr. Williams: Your Honor, I think we are now going—we have here the defendant admittedly victimized by eavesdropping of an electronic nature at these premises. The Government is now seeking a disclosure from the defendant of the very things which it unlawfully obtained, and I think it is beyond the scope of the direct examination as well as being improper cross examination.

86 Mr. Bittman: Your Honor, in response to that, I am merely attempting to elicit the specifics which were not included in their motion to suppress. Mr. Baker again states, and so does Mr. Black, who previously testified, things which are very unspecific. I am trying to find out specifics.

The Court: I will permit the question.

The Witness: Just offhand, I talked to Mr. Black, I talked with Mr. Gene Hancock, who was the President of our company. I talked to Mr. Levinson. I talked to Mr. Tucker, who I was associated with during this period. I am sure I have talked to Mr. Wayne Bromley, who I had some business associations with.

I talked to quite a few Governmental officials, I guess practically everybody in the town, you know, that had anything to do with the Congress, I possibly talked to from this—if I wasn't in my office and happened to be there and my secretary called me and told me senator X wants to talk to me, I would call him.

I would talk to my bankers about my business relationships. I could prepare, you know, from memory, a list of maybe from 100 to 500 different people that I talked to, but you got to refresh your recollection.

87 By Mr. Bittman:

Q. Would that all be during this three-month period?

A. Yes, sir.

Q. That would be conversations in the suite of Fred Black? A. Yes, sir.

Q. You say there are approximately 500 of these? A. Well, I would say I easily could have had 100 to 500 telephone calls with different people.

Q. Now, Mr. Baker, with respect to this specific period of time, February, March and April of 1963, did you have any conversations with any of these people that related to matters contained in this indictment? A. Yes, sir.

* * * * *

Excerpts from Transcript of November 16, 1966

162 The Court: I think perhaps, Mr. Bittman, we can shorten this matter if the Court simply restates the questions which the Court is interested in on this motion to suppress.

Can the witness point to any of these conversations which are transcribed in Defense Exhibit No. 1 and point out any of these transcribed conversations which relate to the subject matter of the indictment?

The Witness: Your Honor—

The Court: You may take your time, Mr. Baker, and when you run across one that in terms does relate to any matter in the indictment, let us know.

The Witness: Your Honor, I think that on 3/8/63—

The Court: What page?

163 The Witness: This is on page 6, the last paragraph. It says here that: "Bobby Baker made a telephone call and asked for extension 6241. Baker

asked if Dotty was there. There was a pause and said Mrs. Baker. I am at the D. C. National Bank and just signing your life away with this help. Baker stated he was filling out an application and commented on the number of papers. Baker advised he has to make a speech and has not prepared anything. Baker stated it has something to do with the legislative program of loan people and he had to be over there by six o'clock." The part of the loan could, because I think there was some funds that I had that could be a part of it, but I don't know. I mean, this thing is so jumbled. Your Honor, it is impossible for me to answer you that it does or does not. I think it does. But I don't know.

By Mr. Bittman:

Q. Do you have a specific recollection of this conversation? A. I do not, sir.

Q. Let's move on, then. A. Your Honor, on the date of 11/16/66, page 9: "Phone call. Asked for an indistinct extension. Is Warren Barker (phonetic) there?

164 Bobby Baker. (Phone book gives a Warren J. Barker, 3633 Yuma, Northwest—966-8333. Baker says among indistinct remarks, Let's go to Baltimore to eat."

In my opinion, this was a call from me to Mr. Wayne Bromley, and I asked Mr. Bromley to go to Baltimore to dinner with me. To my best information and belief, I don't know Mr. Barker, and I am embarrassed that he has to be brought into the case because of this. But that would be my judgment; and, therefore, I am of the opinion if we had available any conversations that you had with Mr. Bromley—

Q. Let's stay specifically, Mr. Baker, with what is before you. A. O.K.

Q. Do you have a recollection of having that conversation on that date with Mr. Wayne Bromley? A. I am of the opinion that I did, sir.

Q. All right, sir. Now, do you have a recollection of any further conversations you had with Mr. Bromley at that time? A. I would like to have any information that you have about Mr. Bromley. That is the only way I can answer your question.

Q. I am asking you, sir, do you have any recollection at this time based on your memory being refreshed
165 of any further conversation that you had with Wayne Bromley on this occasion? A. I am inclined to believe that I had a conversation, but without additional information, I cannot specifically answer your question.

Q. All right, sir. You don't have any further recollection. Let's move on. A. To save time, I would think, Your Honor, that on page 9, the conversation 3/11/63, with Mr. Black would be relevant to the taps with Mr. Black; and as you go further, I am sure that my memory can be refreshed specifically what Mr. Black and I talked about.

Q. Mr. Baker, that's not the question before you. The question before you is whether or not any of the transcribed conversations before you relate to this indictment in any way. If they do, I would appreciate if you would please say yes, this does or this doesn't, and we can go forward. A. I am inclined to think that all of it does.

Q. All of it does? A. Yes.

166 Q. Everything in this relates to the indictment?

A. I am of the opinion that it is related.

* * * * *

170 By Mr. Bittman:

Q. Any other conversation, Mr. Bittman, that you believe from what is before you relates to any charges in the indictment? A. I would like to include all of page 14, sir.

Q. All of page 14? A. Yes, sir.

Q. Do you have a specific recollection of that conversation? A. I was engaged in conversation.

Q. Pardon me. A. I was engaged in the conversation that was monitored here.

170-A Q. To what charge of the indictment does page 14 relate? A. Generally, the entire indictment.

Q. The entire indictment? A. Yes, sir.

Q. Go on. A. I would like to include page 15 also.

Q. Do you have a recollection of that conversation? A. Generally, yes, sir.

Q. Do you have a recollection of any further conversation that you had at that time and place? A. Not specifically, no, sir.

Q. To what charge of the indictment does page 15 relate, Mr. Baker? A. The general indictment.

Q. The general indictment? A. Yes, sir.

Q. You are aware, are you not, that the indictment runs from 1961 to part of 1965? A. I am aware of that.

Q. You are aware of that? A. Yes, sir.

170-B The Court: This conversation was in '63. Very well. Go ahead.

By Mr. Bittman:

Q. Let's go to page 16, sir. A. I would like to include page 16, 4/4/63, sir.

Q. Do you have a recollection of that conversation? A. Generally, yes, sir.

Q. Do you have a recollection of any additional conversation which took place? A. No, sir.

Q. And to what charge of the indictment does that conversation relate? A. The entire indictment.

Q. The entire indictment, all right. A. 4/18/63, page 17, I would like to include the entire paragraph.

Q. Do you have a recollection of that conversation? A. Yes, sir.

Q. Do you have a recollection of any additional conversation at that time and place? A. Specifically, no.

Q. I see. And to what charge of the indictment does that particular conversation relate? A. It would relate to the entire indictment.

• • • • •

180 Thereupon

Edward W. Pennypacker

181 was called as a witness by counsel for the Defendant,
and having been duly sworn was examined and
testified as follows:

Direct Examination

By Mr. Williams:

Q. Would you state your full name, please? A. Edward
W. Pennypacker.

Q. And where do you reside, sir? A. I reside?

Q. Yes. A. In Vienna, Virginia.

Q. How long have you lived there, Mr. Pennypacker?
A. Since 1956.

Q. And what is your occupation? A. I am a special agent
of the Federal Bureau of Investigation.

Q. How long have you been so employed? A. Since
1949.

Q. Directing your attention, Mr. Pennypacker, to the
year 1963, did there come a time when you were designated
as the agent in charge of the investigation involving one
Fred Black? A. Yes, I was.

Q. When was that, sir? A. It was in 1962, July
182 1962.

Q. July of '62? A. 1962.

Q. Did there come a time when, Mr. Pennypacker, you
were either directed or authorized to conduct a microphone
surveillance on him? A. Yes, there was.

Q. When did that occur, sir? A. That occurred in Feb-
ruary 1963.

Q. And who authorized that?

Mr. Bittman: I object to the question, Your Honor. It
is immaterial and irrelevant to Mr. Williams' attempt to
show a causal connection between these conversations and
the instant indictment. This type of question, Your Honor,

is not material, not relevant in any way at all, as to who authorized this particular—

The Court: I will sustain that objection.

Mr. Williams: Would Your Honor allow me to be heard on that point?

The Court: Mr. Williams, I am interested in the causal connection at this time. I don't believe that question is material to causal connection.

Mr. Williams: May I call Your Honor's attention to the Supreme Court's preliminary decision in the 183 Black case in which the Court directed certain questions to the Department of Justice after the concession that microphone surveillance, this very microphone surveillance—

The Court: That is a trial situation.

Mr. Williams: Sorry, sir.

The Court: Trial situation. We are just dealing with a preliminary question here.

Mr. Williams: I am not sure I understand Your Honor's—

The Court: You may question him, but not on that point.

By Mr. Williams:

Q. Mr. Pennypacker, did there come a time, in fact, when you began a microphone surveillance on Mr. Black?

A. Yes, there did.

Q. And where was that conducted? A. At the Sheraton-Carlton Hotel.

Q. And when did it begin, sir? A. On February 7, 1963.

Q. And did you conduct a microphone surveillance on Mr. Black at his office, 1730 K Street? A. No, we did not.

Q. When you say "we"— A. No, I did not.

184 Q. To your knowledge did any agent of the FBI conduct such a microphone surveillance? A. Not to my knowledge.

Q. Now, would you tell the Court, please, the way in which this surveillance was set up?

Mr. Bittman: I object. It is immaterial and irrelevant. The Government has conceded for purposes of this hearing that these conversations were electronically monitored without the consent of Mr. Baker, and I don't believe that an answer to this question would serve any useful purpose, for purposes of this hearing.

Mr. Williams: Your Honor, obviously there is a very sharp difference here between the Government and the defense with respect to what was picked up, and I think it becomes very important as to the equipment that was used and where it was placed as to whether an explanation for conversations not being picked up can be found in that line of testimony.

The Court: I will permit the question with that explanation.

The Witness: I am sorry. I would like to have the question repeated.

185 By Mr. Williams:

Q. Yes, sir.

I asked you, Mr. Pennypacker, if you would describe for us the manner in which the electronic surveillance was set up.

Mr. Bittman: I object. Manner goes beyond what Mr. Williams submitted to the Court. Manner. I object to that question as being too broad. Manner. I think there should be specific questions, and I object to the nature of that—the form of the question.

The Court: Perhaps you can lay a foundation for it, Mr. Williams, in line with your explanation to the Court.

By Mr. Williams:

Q. Mr. Pennypacker, you used equipment, electronic in nature, to conduct this surveillance, did you not? A. Equipment was used, yes.

Q. Where was that equipment located? A. In suite 438-40, Room 438 of the Sheraton-Carlton Hotel.

Q. What was the suite that was occupied by Mr. Black? A. He occupied suite 438-40, two rooms.

Q. In what room was the equipment placed?
186 A. It was first placed in—I have to say that I wasn't there, but from my knowledge I can say it was first placed in the adjoining room, and subsequently moved to Room 432. I don't know which of the two rooms was the adjoining room.

Q. Well, is 432 an adjoining room, also? A. No, no.

Q. It is a room on the same side of the hall or across the corridor? A. It is around the corner.

Q. Around the corner.

But at first it was placed in an adjoining, contiguous room? A. That's right.

Q. Was the contiguous room to the bedroom or the continuous room to the living room? A. The living room.

Q. And when it was placed around the corner was it contiguous to the bedroom or the living room? A. Living room.

Q. So that all during the time this surveillance was conducted the device was contiguous to the living room?

A. To the living room.

187 Q. Could you tell us whether or not—what the nature of the device was?

Mr. Bittman: I object. I believe, Your Honor, from what Mr. Williams represented to the Court that the witness has answered, that now we have the device in the living room, and I think that is far enough. I don't think it is going to accomplish any useful purpose, Your Honor, to proceed along these lines, and I would object to any further questions along these lines.

The Court: One of the issues in the case, Mr. Bittman, is the extent to which this device accurately recorded the conversations.

Mr. Bittman: Your Honor, the difficulty we have here is that Mr. Pennypacker did not monitor any of these conversations, and I so stated to Mr. Williams before Mr. Pennypacker took the stand.

The Court: Your representation is that Mr. Pennypacker does not know which device was used except through hearsay; we can develop this through another witness.

Mr. Bittman: We have these in two categories: monitoring agents who did hear, and the case agents to whom they reported. As Mr. Williams knows, Mr. Pennypacker is a case agent and not a monitoring agent.

188 Mr. Williams: I would like to ask him if he knows.

The Court: All right. You may ask him if he knows.

By Mr. Williams:

Q. Do you understand the question, Mr. Pennypacker?

A. As I understand it, you asked me if I knew what type of microphone it was. No, I don't.

Q. The wire-tapping equipment or eavesdropping equipment? A. It was microphone; it was not wire-tapping.

Q. It was a microphone? A. Microphone.

Q. And where was the microphone placed; in the wall? A. In the wall.

Q. And did it penetrate through the wall? A. I can't answer that.

Q. Well, as agent in charge, do you know whether the microphone was sensitive enough to pick up conversations throughout the suite?

Mr. Bittman: I object, Your Honor. Immaterial and irrelevant.

189 The Court: If the witness knows, he may answer.

If he doesn't know, you can develop that through another witness.

The Witness: I can't say that it can pick up information throughout the entire suite of 4840.

By Mr. Williams:

Q. 438-40? A. 438-40.

Q. You can't say? A. I cannot say.

Q. You did not at any time, I take it, from your answers, monitor that microphone? A. No, I did not.

Q. What arrangements were made for the monitoring of them? A. There were agents assigned to do the monitoring of it.

Q. And from where was the monitoring conducted? A. As I previously stated, from the adjoining room at first, and then at Room 432.

Q. Now, incident to the monitoring of the microphone, did you direct that recordings be made of the sound
190 emanating from Mr. Black's suite? A. Yes, I did.

Q. And were recordings made? A. Yes, they were.

Q. Have they been preserved? A. No, they have not.

Q. Did you give instructions to the monitors who were assigned to listen to what took place in 438-40? A. Yes, I did.

Q. What instructions did you give them? A. I instructed them to monitor the conversations and to make tape recordings of information picked up where it pertained to matters of interest, not pertaining to use by the hotel personnel, you know, cleaning of the room by the maids, and use of this phone.

Q. What did you instruct them were matters of interest? A. Anything that came through the microphone pertaining to Black or his contacts.

Q. Anything other than conversations between the maids cleaning the room; is that it? A. That's right.

Q. And were they instructed to record those
191 conversations? A. Yes, they were.

Q. Were they instructed simultaneously to make notes? A. They were.

Q. Were the notes to be made in handwriting? A. Yes, they were.

Q. And do you know whether the notes of those agents have been preserved? A. Yes, they have.

Q. And they are, as far as you know, intact? A. Yes, as far as I know.

Q. Do the individual agents have those notes? A. No. As far as I know, they have been submitted to the Court.

Q. They are handwritten notes? A. These are the logs. These handwritten notes you are referring to are the logs that the agent prepared.

Q. Would you tell us what you mean by logs, Mr. Pennypacker? A. Yes. These are the handwritten transcripts of information obtained by these agents during the monitoring.

Q. So that I will understand your answer, is it
192 your testimony that when an agent was monitoring what took place in Mr. Black's suite, he would simultaneously have a tape recorder on, and also make longhand notes of what he heard? A. That's right. And then he would use the tape to further make the notes. The actual notes were made from the tape, listening on the tape what he picked up.

Q. The notes were made from the tape, or were they made from what he heard— A. Made from both. The tape was for purposes of running back to record these handwritten notes. The person would talk too fast for the agent to write as fast as they talked.

Q. Now, over what hours was the Black suite monitored? A. We had men there twenty-four hours a day.

Q. Twenty-four hours a day. How many men would be there at the same time? A. One.

Q. One.

And each one would work an eight-hour shift; is that so? A. Not always. A man would be on duty for a twenty-four hour period, generally. There have
193 been exceptions to this rule, depending on—

Q. Can you tell us, Mr. Pennypacker, the names of the agents who monitored the Black suite? A. Yes, I can.

Q. Would you give those names to us, please?

Mr. Bittman: Your Honor, I object, unless these particular conversations reveal that Baker was present or a participant.

The Court: The names of the agents who monitored the conversations?

Mr. Bittman: I believe that the only area, Your Honor, that is pertinent to this hearing are in connection with those conversations in which the defendant Robert G. Baker was either present or was a participant. Therefore, I object to the form of that question. It is too broad.

Mr. Williams: Your Honor, there is testimony in the record now that Mr. Baker was present in that suite on almost a daily basis during the months of February, March and April. The Government has offered to the Court as the full extent of the monitored conversations which Mr. Baker was allegedly a participant only ten days out of
194 seventy-seven days in which they concede they monitored that suite. And I suggest to the Court that

we have a right to know the names of the agents who were listening on that twenty-four hour surveillance to determine whether we have all of the Baker conversations or not.

The Court: I will permit you to ask the question, Mr. Williams.

The Court recalls Mr. Baker's conversations, or testimony to the effect that he went to this suite before going to the Capitol. He sometimes took his lunch there, and sometimes went there after he returned from the Capitol. The Court assumes he was at the Capitol some of the time during this interval of three months.

Mr. Williams: I think that is a very valid assumption, Your Honor, but the testimony is also that he was there virtually every day. He certainly is not at war with—

The Court: I will permit the question.

The Witness: Phillip M. King.

By Mr. Williams:

Q. What was the first one, please? A. Phillip M. King. H. Branch, B-r-a-n-c-h, Wood. Carlton Giovannetti, G-i-o-v-a-n-n-e-t-t-i. William Sloan, S-l-o-a-n. Robert Shakelford. Charles Shores.

195 Last name, please? A. Shores, S-h-o-r-e-s.

Q. Are there any others, sir? A. No.

Q. In other words, there were six agents? A. Six agents.

Q. Who monitored the conversations during this three-month period? A. That's right.

Q. Did there come a time when that microphone was removed which was used as a means of surveillance of Black's suite? A. I can't answer that. I can say that the monitoring equipment was removed. The entire equipment, I can't say—

Q. Did there come a time when the surveillance was discontinued? A. That is correct.

Q. When was that, sir? A. April 25, 1963.

Q. April 25 of '63. A. '63.

Q. Now, was there any other surveillance by microphone of Mr. Black in the District of Columbia at that
196 time? A. No.

Q. This was the only one? A. Only one.

Q. Was there any in 1962? A. No.

Q. The first surveillance put on him was in February of '63? A. That is right.

Q. Now, do you know of your knowledge, Mr. Penny-packer, whether the monitors who were assigned to this job of listening to the conversations in the Black suite were made familiar with Mr. Baker's voice? I am talking about the defendant in this case, Robert G. Baker.

Mr. Bittman: I object to the form of the question. Made familiar, Your Honor? I object to that question.

Mr. Williams: I intend to ask the monitors individually with respect to their familiarity, Your Honor, with his voice, but I want to elicit from this witness whether or

not he knows whether any measure was taken to make them familiar with Mr. Baker's voice prior to the surveillance, or during it.

197 The Court: I think, in view of the objection, I will let you ask that question of the monitors. They can tell you what familiarity they had.

By Mr. Williams:

Q. Did you, Mr. Pennypacker, as agent in charge, have occasion to listen to the tapes? A. Yes, I did.

Q. Did you listen to them each day? A. No.

Q. Would you tell us what your practice was with respect to listening to them? A. Practice was that if the monitoring agent was unable to complete his work during the time he was monitoring the conversations, or if he wanted me to listen to a particular area to help to identify an individual on there, he would turn the tape over to me and I would use another recorder in the office, in the Washington Field Office, and either go over the tape for him, or I would complete the work that he had started.

Q. Now, after the—let me ask you a second question on the same subject:

Were there notes turned over to you as agent in charge? A. Yes.

198 Q. Logs. A. Logs.

Q. And did they make reports with respect to each eight-hour surveillance in typewritten form which was turned over to you? A. No.

Q. They did not? A. No.

Q. What was done with the raw logs after they were turned over to you? A. I would review them and check them for identification of individuals. I would prepare a summary which would be submitted to the bureau, and to any offices of interest working on the case, on the Black case.

Q. Now, when you say you prepared a summary, do you mean that you would put in narrative form the information

that was obtained as the result of the surveillance? A. That is right.

Q. And would that narrative summary be made as the result of your reading the logs and listening to the tapes?

A. That is right.

199 Q. And with what degree of frequency did you read the logs and listen to the tapes for the purposes of making narrative summaries during the seventy-seven day period? A. Well, more than not I made the summary from the logs. I can't state at this time how many times I listened to the tapes. There was no record kept. It was a matter of the agent contacting me, giving me the tape and asking me to do it.

Q. I want to hand to you, Mr. Pennypacker, what has been identified here as Defendant's Number 1 for identification, and ask you if you can tell us what that document is? A. That is a type copy of the handwritten logs wherein they pertain to Robert Baker.

Q. Did you prepare that, sir? A. No, I did not.

Q. Do you know who did? A. No, I do not.

Q. But it is your testimony that Defendant's Number 1 was extracted and typed from the logs made of the surveillance at the Carlton Hotel wherein those logs related to Baker? A. That is right.

200 Q. Now, when you read the logs, Mr. Pennypacker, were there occasions when the person who was speaking and whose voice was recorded on the logs was unidentified? A. Yes, there were.

Q. Were they many or few? A. Not many. I can't say there were few. It is a matter of interpretation. But there weren't many.

Q. So would there be occasions each day when there would be materials which were picked up by the microphone surveillance from voices not identified? A. Yes, but not each day. Did you say each day?

Q. Yes. A. No, not each day.

Q. Not each day. A. No.

Q. Well, how frequently would that happen? A. Once every ten days is the best of my recollection.

Q. Now, do you recall during your conduct of this case hearing Mr. Baker's voice on tape? A. On tape, yes.

200-A Q. Did you come to recognize that voice? A. I wasn't familiar with the voice because I didn't hear it that often.

Q. Well, on each occasion when you heard his voice on tape, was it clear from something that was said, also recorded on the tape, that it was Mr. Baker speaking? A. Yes.

Q. In other words, it would be a phone call, "This is Bobby Baker calling," or a phone call into the room for Bobby Baker, or he would be addressed by name; is that correct? A. That is right.

Q. Were there any occasions when materials were ascribed to Mr. Baker as the speaker wherein he was not identified by name, either on the phone or by being addressed by someone in that suite? A. Not by conversations that I monitored, or that I listened to the tape of. The agents, when they gave me the handwritten logs they put Bobby Baker down. They had a method of identifying it was Bobby Baker unless they said it was an unidentified man who gave a telephone number which would be to Bobby Baker's office, and he would speak to someone that would indicate that he was Bobby Baker.

The Court: Mr. Williams, we will suspend for a moment while we change reporters.

201 (Whereupon, at 2:31 P. M., the hearing resumed.)

By Mr. Williams:

Q. Mr. Pennypacker, was this file on the surveillance of the Carlton Hotel, on Mr. Black's suite, given a number at FBI? A. Yes, it was.

Q. Do you remember the number? A. Yes, I do.

Q. What was it? A. 92-699.

Q. And what did that file contain to the best of your recollection.

Mr. Bittman: I object. If it goes beyond these logs. The file might include many other things and I don't believe other things would be pertinent or relevant to this inquiry.

The Court: I will sustain that objection.

By Mr. Williams:

Q. Did it contain things other than the logs and summaries? A. The logs and summaries were maintained as a sub-file separate from the main file. The logs were made a file of their own, with a sub-file, a secondary file to 202 92-699, but bore the same number.

Q. The logs or the summaries? A. No, the logs were in there.

Q. They were all part of a file known as 92-699? A. That is right.

Q. Where did the summaries go, Mr. Pennypacker, that you prepared?

Mr. Bittman: I would object, Your Honor, unless it is limited to the issues of this hearing which would be conversations where Baker was present or a participant.

The Court: In view of your motion, Mr. Williams, we will limit the question to those matters in which Mr. Baker was a participant.

Mr. Williams: I am sorry.

The Court: In view of the terms of your motion, the question will be limited to those monitored conversations in which Mr. Baker was a participant.

The Witness: The summaries would be directed to the Bureau with copies to interested offices or offices that I decided to send copies to.

By Mr. Williams:

Q. Which offices did you decide to to send copies to?

A. Miami, Las Vegas, Los Angeles, Oklahoma City, 203 and Kansas City.

Q. Did you send copies to agents other than the FBI? A. No.

Q. Did the Internal Revenue Service receive copies? A. No.

Mr. Bittman: I object. He just answered no.

The Court: The question has been answered.

Mr. Williams: I suggest to the Court under the decided cases, I am entitled to examine these witnesses as adverse witnesses and that the ordinary rules of direct examination don't obtain although I am trying to stay within those limits as best I can.

By Mr. Williams:

Q. Mr. Pennypacker, do you know where the logs of the 92-699 file are presently?

Mr. Bittman: I didn't hear that. Read that.

(The reporter read the question back)

By Mr. Williams:

Q. Do you understand the question? A. Well, the originals are the only file so far as I know. And they have been turned over as far as I know to either the Court or the Department of Justice. I don't know where they are. I don't have them.

204 Q. Are the logs that are contained in 92-699 handwritten logs or are they typed? A. They are handwritten.

Q. They are hand-written, and you don't know where they are now?

Mr. Bittman: I object. He didn't say that. He said either with the Court or the Department of Justice, Your Honor.

Mr. Williams: I am trying to find out where they are.

The Court: I think he answered the question. He said to the Court or the Department of Justice.

Mr. Williams: Well, if the Court please, at this time I would respectfully ask that those logs be turned over.

The Court: Yes, you made that motion and the court has ruled on it, Mr. Williams.

Mr. Williams: I don't think so.

The Court: That is material the Court has.

Mr. Williams: The Court has the logs?

The Court: Yes. Yes.

Mr. Williams: I didn't understand that, if the Court please.

The Court: Yes.

205 Mr. Williams: I understood the Court had typed materials.

The Court: No, sir. The Court has the logs.

Mr. Williams: This is the only way I can find out, Your Honor, by asking. He hasn't made us a party to this information so I had to ask.

The Court: Certainly.

Mr. Williams: We have to play blind-man's bluff in a sense here because we don't know anything about these materials.

By Mr. Williams:

Q. Are Mr. Shackelford and Mr. Shores still to your knowledge with the Federal Bureau of Investigation? A. Yes, they are.

Q. And are they still in the Washington area? A. Yes, they are.

Mr. Williams: Would Your Honor indulge me, just a moment?

The Court: Surely.

By Mr. Williams:

Q. Your Honor, may we have produced to us the original logs, on those conversations which have been turned over to us as Defendant's Exhibit 1 for identification?

206 The Court: You cannot at this time, Mr. Williams, because they are all together. They haven't been segregated.

Mr. Bittman: Your Honor, I believe when monitoring agents take the witness stand this area can be resolved. They have made comparison with the handwritten logs with the typewritten portions which were submitted to the defendant's attorney. And they have initialed them and they will attest that they are true and accurate and to the best of their knowledge from the comparison.

The Court: All right.

Mr. Williams: May we have, if the Court please, the summaries which Mr. Pennypacker has made from those logs about which he has given testimony and which are contained in File 92-699?

Mr. Bittman: Your Honor, I believe it will be revealed that the summaries of the logs, I mean the logs are the best evidence here. They are everything, as Agent Pennypacker has testified to. It will serve no useful purpose to turn over summaries of those logs.

The Court: I will sustain that objection.

Mr. Williams: As a result of sending the summaries which you have described to the various cities, Mr. Pennypacker, I think you mentioned five or six cities? A. 207 That is right.

Q. Miami, Las Vegas, Kansas City and Oklahoma City? A. And Los Angeles.

Q. Did you, in turn, receive back from those offices memoranda of information?

Mr. Bittman: I'd object, Your Honor, unless this question is limited to those summaries of those conversations in which Robert G. Baker was either a participant or was present. If the question is so limited I have no objection.

The Court: Yes, I think it should be limited in line with your motion to conversations in which Mr. Baker was a participant.

Mr. Williams: I will adopt that amendment.

The Court: All right.

The Witness: No, I didn't receive answers back to these communications.

By Mr. Williams:

Q. You did not? A. I did not.

Q. In other words, it was an unilateral distribution of information emanating from you, but there was no information received back as the result of the dissemination of that information? A. In connection with Robert Baker?

208 Q. Yes, sir. A. I'd other information in communications; the summary AIRTELS do not include more than just Bobby Baker.

Q. As a result of the microphone surveillance that you conducted at the Carlton, did you prepare any summaries regarding Robert Baker? A. Yes, sir.

Q. And what did you do with those summaries? A. Well, I just testified, they were part—I am sorry. I didn't prepare any summaries of Robert Baker as the subject of the summary. It was part of the summary in connection with the Fred Black case.

Q. But there was a portion of some of those summaries devoted to Robert Baker, is that correct? A. He was in—his name was in portions of those summaries.

Q. Did you have any file that you made on Robert Baker as the result of the surveillance? A. No.

Q. You did not? A. Did not.

Q. Did you send any of the materials which you received on him to any places other than the ones that you have mentioned? A. No, I did not. Not in the summaries. I am sorry, No I did not. I had to send things to the Bureau. You mentioned five cities, the Bureau was also contacted. You know, I disseminated to the Bureau. We disseminate everything to the Bureau. We send everything over to the Bureau and we send copies to the other offices.

Mr. Williams: That is all I have, Your Honor.

The Court: Any cross?

Mr. Bittman: Yes, Your Honor. Very short.

The Court: All right.

Cross Examination

By Mr. Bittman:

Q. Mr. Pennypacker, the summaries which you have described insofar as they relate to conversations where Robert G. Baker was present or participant were summaries of the logs which contain all of the information, is that correct? A. That is correct.

Q. Now, isn't it true that the reason you didn't receive any replies from the field offices to which you would disseminate this information because of the fact you didn't request insofar as Robert G. Baker is concerned? A. That is right.

Q. Do you know, Mr. Pennypacker, whether or not those filed offices did conduct any investigations as a result
210 of those summaries insofar as they relate to the Baker conversations? A. No.

Q. How do you know that? A. Because if they would have conducted any investigation, they would have directed a copy to me, or to my file, and I have caused to be sent to the offices, which I disseminated these summaries to, a request that they check their files to see if they conducted any investigation based on the summaries which included information concerning Robert Baker, and they have—the Special Agents in charge have filed affidavits attesting to the fact that they did not conduct any investigation of Robert Baker as a result of these communications.

Q. And you have examined those affidavits personally, have you not? A. I have.

Q. Wasn't this done at my request? A. Yes, it was.

Q. No further questions.

The Court: Anything further, Mr. Williams?

Mr. Williams: No, sir.

The Court: You may step down, Mr. Pennypacker.

(Witness excused)

211 Mr. Bittman: Whom do you want now? Anyone you want, I will make available, whether it be Miami, Los Angeles, Las Vegas. It is immaterial.

Mr. Williams: Mr. Shedd.

Mr. Bittman: Your Honor, I am sorry for the delay. I didn't know how long Mr. Williams' examination would be or whom he wanted next. I apologize for the delay. Whereupon,

John Edward Shedd

witness called for examination by counsel for Defendant, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Taft:

Q. Mr. Shedd, would you state your name and address?

A. John Edward Shedd, 4618 Larton Lane, West Seattle, Washington.

Q. And how are you occupied, Mr. Shedd? A. I am employed as a Special Agent of the F.B.I.

Q. And how long have you been a Special Agent? A. Since March 5, 1951.

Q. Did there come a time when you were assigned to Las Vegas, Nevada? A. Yes, there was.

212 Q. When was that? A. From July 1962 through March 1965.

Q. Did there come further a time when you were in charge or assigned as a case agent for the Fremont Hotel? A. Yes.

Q. When was that? A. That was approximately August of 1962.

Q. Were you assigned the hotel at large or did it include any individuals beyond that? A. Specifically, Mr. Edward Levinson.

Q. Did there come a time when an electronic device was placed in the Fremont Hotel? A. Yes.

Q. When was that? A. November 1962.

Q. Was that the first device to be placed in the Fremont Hotel to your knowledge? A. I have no personal knowledge of any prior device.

Q. Did you apply for authority to place that device into the Fremont Hotel?

Mr. Bittman: I object to the question, Your Honor.

The Court: I have excluded that, Mr. Taft.

Mr. Taft: Yes, Your Honor. I was just making a record on that. On that same line, I would have asked concerning records in that respect and asking for their
213 production.

By Mr. Taft:

Q. Mr. Shedd, could you state where that device was placed in the Fremont Hotel? A. I have no personal knowledge of its exact location.

Q. Can you locate it in any way at all? A. It was, I was told that it was.

The Court: What he was told, of course, is hearsay. You can get that from the agent in just a minute.

By Mr. Taft:

Q. Could you state who told you? A. The agent who had the assignment to take care of that matter.

Q. And who was that?

Mr. Bittman: We have no objection to Agent Shedd answering approximately where it was located to save another agent coming from Las Vegas to testify specifically to that. Because if this agent does not testify to that I am sure they will request another agent from Las Vegas and for sheer economic reasons if Mr. Shedd knows of a reasonable certainty, the Government has no objection to that testimony if they want to elicit it.

The Court: Gentlemen, the Government is bringing
214 on witnesses who have personal knowledge, I take it, of where these devices were placed.

If you want hearsay from this witness, I won't exclude it but I think that testimony from the one who had actual knowledge would be better.

Mr. Williams: Your Honor, he says that they don't have anybody here who has personal knowledge. We asked them to produce these people.

Mr. Bittman: I object to that. Mr. Williams. that is not true.

The Court: Gentlemen, we are going to have no colloquy. I made that point before and I emphasize it. Both of you will address the Court.

Mr. Bittman: I am sorry.

By Mr. Taft:

Q. Mr. Shedd, did you come into this information in the ordinary course of your business as to the location of the device? A. I have no personal knowledge of its specific location other than it was placed in the Executive Offices of Mr. Levinson.

Q. And who informed you of its location? A. The Agent who was assigned to handle that responsibility.

215 Q. And who was that? A. That was—

Mr. Bittman: Objection. It would be immaterial and irrelevant, Your Honor.

The Court: Overruled.

By Mr. Taft:

Q. You may answer. A. Would you repeat the question? (The Reporter read the question back.)

The Witness: Mr. Lee. Robert Lee.

Mr. Taft: Mr. Lee would be here, is that correct?

Mr. Bittman: Mr. Lee is here. He is here.

By Mr. Taft:

Q. Was this a microphone device? A. I was told that it was a microphone.

Q. And how was this microphone monitored and how was the microphone connected up with the monitoring equipment?

Mr. Bittman: Your Honor, I am going to object to that. I don't believe it is proper examination for the limited purpose of this hearing.

Mr. Taft: Your Honor, perhaps I can shorten this.

By Mr. Taft:

216 Q. Was the monitoring equipment on this device in the F.B.I. Headquarters in Las Vegas? A. Yes, it was.

Q. And it was connected by leased telephone lines from the device to the Headquarters?

Mr. Bittman: This is again irrelevant, Your Honor. I object to it.

Mr. Taft: I think we have to find out how the device was monitored.

The Court: I will permit the question.

The Witness: Would you read it.

(The Reporter read the question.)

The Witness: I was told that it was connected by leased lines.

By Mr. Taft:

Q. What was the set-up in the headquarters for the monitoring of this particular device? A. There was a special room set aside for this.

Q. And would you state how it was monitored in that room? A. Certain people, employees were assigned to the monitoring in this room.

Q. And who were the individuals that monitored this particular device at the Fremont Hotel?

217 Mr. Bittman: I object, Your Honor, unless the question is restricted to those conversations in which Baker was a participant or was present.

The Court: It will be restricted to those conversations in which the defendant Baker was a participant.

Mr. Taft: I believe we got all the monitors with respect to the other device at the Carlton suite. At issue may be

whether or not there are other conversations which Mr. Levinson had with Mr. Baker, and whether or not they could identify in the conversation of Mr. Levinson whether or not it was Mr. Baker that he was conversing with.

The Court: What we are interested in here, Mr. Taft, is a motion of the defense which relates to the Baker conversations, or those conversations in which he was a participant.

Mr. Taft: One of the issues, I believe, as well is what conversations were overheard. But I will continue on this.

By Mr. Taft:

Q. Who were the monitors which did monitor conversations which you have in fact identified as those in which Mr. Baker participated? A. Mr. Ridehour, Mr. Dunfee and

Mr. Lee.

218 Q. Did you, in fact, give instructions to these individuals as to how they should monitor and what they should monitor? A. Yes, I did.

Q. And were these instructions the same for these three and for all other monitors of that device? A. That is correct.

Q. And what, in fact, were those instructions that you gave to them. A. I told these men that we were conducting a criminal intelligence investigation the subject of which was Edward Levinson. I told them that they should monitor all conversations that took place in respect to skimming operations, hidden interests, political corruption, and Mr. Levinson's conversations which deal directly with his connection with organized crime.

Q. Did you give them specific names which they should record or monitor everything that those particular individuals stated? A. I gave them the names of the corporate officers who would possibly have access to this office.

Q. And one of those names was Mr. Levinson, of course? A. That is correct.

219-226 Q. And were they in charge or instructed to record or to monitor everything said by Mr. Levinson in that office? A. They were instructed to record his conversations which dealt with skimming operations, hidden interests, any tie-up with organized crime, associates.

Q. Were they also instructed with respect to any business relationships of Mr. Levinson? A. The instructions were not that detailed.

229 Q. Did they record everything from which, about which they took notes, or did they take notes on and not record them? A. It is my understanding that everything that was recorded by either typewriter or handwritten log was also recorded.

Q. And what were the nature of the logs which they prepared? A. It was a sheet of paper which was dated and in the columns, respective columns would be the initials of the monitor, whether this was an incoming or outgoing telephone conversation, a call, and the time that the call was, or the conversation took place.

Q. Would it state who was present at the time? A. Yes.

Q. Would it state to whom any calls were made or received? A. That would depend upon the conversation.

Q. Assuming they noted a telephone call, would they note who was the participant of that phone call? A. The person placing an outgoing call of course would be known probably as Mr. Levinson or Mr. Torres, but if a number was dialed directly there would be no knowledge as to who the other person was on the other end unless the caller made it known.

230 Q. In other words, there may be recordings with respect to, or logs with respect to telephone calls where the only participant that you have knowledge of is the person making the call. You do not know necessarily who it is to? A. That is correct.

Q. And would this also be true with respect to incoming calls? A. That is correct.

Q. Did you at any time hear the recordings which were

made by the monitors on this device? A. I reviewed every recording.

Q. Did the monitors make notes on the basis of what they heard or did they make their notes on the basis of playing back first for themselves the recording after a conversation? A. They would make their 1 entry in the log at the time, mostly at the time the conversation was taking place. I'd say that was true in the majority of the cases.

Q. Would they put the subject matter in the log of the conversation? A. A summary of the conversation would appear in the log.

Q. Would they make additional summaries from playbacks of the tape? A. As the case agent that was my responsibility.

231 Q. Did you, in fact, make reports of any kind from these tapes? A. Report?

Q. Any kind of written document? A. Yes.

Q. Would you describe what they were? A. I made verbatim transcriptions from the pertinent material appearing on the tape.

Q. Would you make any other kind of written document? A. No, this would be the original document.

Q. And where would you place these documents, what would you do with them? A. You mean my administrative handling?

Q. Yes. A. Of the verbatim transcripts?

Q. And also the logs. A. After review of the logs, they would be placed in the appropriate file initialling.

The verbatim would appear in an AIRTEL communication which would be sent to Headquarters in Washington, D. C.

Q. Would the particular records you have testified to have been placed in Las Vegas file 92-739? A. That is correct.

Q. And is that the case file for the Fremont Hotel?

232 A. That is correct

Q. Were any copies of the logs also sent to Washington? A. Would you be specific?

Q. Well, in the contemporaneous period in which they were prepared, would they in fact be sent to Washington?

A. The physical log would be maintained in the Headquarters office.

Q. In Las Vegas? A. That is right.

Q. Would copies be sent to Washington? A. No.

Q. What, if anything, would be sent to Washington?

A. There would be a paper communication.

Q. And what would be included in that? A. This would contain the verbatim transcription.

Q. Did you make any reports or summaries other than the verbatims from and based upon these particular logs and verbatim transcripts? A. Would you repeat the question, please?

(The Reporter read the question.)

The Witness: There was the AIRTEL communications which I sent to the Bureau and some other interested offices. There was reports made on the Fremont Hotel and Edward Levinson.

Q. And these would include information from
233 those particular—

Mr. Bittman: Your Honor, I am going to object unless these questions are limited to those conversations in which Baker was present or a participant.

The Court: Yes Mr. Taft, they will have to be limited to that.

Mr. Taft: May I have Defendant's Exhibit Two?

The Clerk: Fremont's Three.

By Mr. Taft:

Q. I will show you Defendant's Exhibit Number Three for identification, and ask you if you can identify that document. A. You asked me to identify this document?

Q. Yes. A. These are summary and verbatim transcriptions of conversations between Ed Levinson and a person by the name of Bobby.

Q. Starting on page one, could you take each paragraph in turn and identify whether it is a, the transcript or the verbatim, or from the logs, if you can? A. All right.

The one under date of November 1, 1962, is a summary appearing on the log.

Q. Would that have been prepared by you or by
234 the monitor? A. This would have been prepared by the monitor.

Q. Would that have been from the tape or from the original hearing of it, if you know?

Mr. Bittman: I object. If it was prepared by the monitor, Mr. Shedd wouldn't necessarily know that.

The Court: He can answer if he knows. If he doesn't know, he can say so.

The Witness: I don't know if it was done simultaneously or subsequent to the transcript of the information.

By Mr. Taft:

Q. Could you identify the second paragraph appearing on page one as coming from the logs or from the verbatims?

A. The second paragraph is a summary appearing on the log.

Q. And could you identify the third paragraph as well?

A. The third paragraph under the same date as December 31, 1962, as the second paragraph, is a verbatim of the summary appearing on the log.

Q. I will direct your attention to the words "the informant" which appears at the start of this paragraph, from the verbatim. It states, "On 12/13/62 the informant advised that Edward Levinson received an incoming telephone call from Robert Baker from Washington, D. C." Could you state why this particular termination was used?

Mr. Bittman: I object to the question.

The Court: If he knows, he can answer.

235 The Witness: The informant is in fact the microphone.

By Mr. Taft:

Q. Did you have any other way in which you referred to this microphone? Any other identification, name or number or anything of that sort?

Mr. Bittman: I object, Your Honor. Not material to the issue. What other names that they might have called this particular microphone.

The Court: I will permit the question.

The Witness: Would you read it?

(The reporter read the question.)

Mr. Bittman: I am going to again object, Your Honor.

The Court: The Court has ruled, Mr. Bittman.

The Witness: The microphone was given a numerical designation.

By Mr. Taft:

Q. Could you state what that designation is?

Mr. Bittman: I object, Your Honor. This is not relevant to the inquiry as to whether or not there is any causal connection between these three conversations and the indictment. I object.

The Court: That is what we are exploring, Mr. Bittman.

I will permit the question.

236 The Witness: It had the letters of L.V. 90C.

By Mr. Taft:

Q. Would you state, Mr. Shedd, on page two, would you identify the entry on 3/31/63 and what source it is from?

A. Under March 31, 1963, what source it's from?

Q. Yes. A. This is from the same source.

Q. What I mean is it a verbatim transcript or is that from the logs or— A. This is a summary of the information appearing on the log.

Q. And I will direct your attention to page three and ask you if you would identify the transcript following

from the language on the same date, would you identify what that was taken from? A. This is a verbatim transcription made by me of the summary appearing on the log that we just discussed.

Q. Am I to understand that the entry on page two at 3/31/63—is that handwritten by the monitor as he is hearing? A. This is a typewritten summary of that information which came over the microphone.

Q. On the next page, the one that you prepared, you state that is a summary which you made from the summary; is that correct? A. This is a verbatim of the summary; verbatim. The verbatim that I make comes from the actual tape. The summary is only a guide.

Q. Well in fact the summary is more complete than the verbatim, is it not? A. I don't believe it is.

Q. Would you compare the two, on page two and three? It contains more information than appears on your verbatim.

Mr. Taft: Your Honor, I think it might help if he had the originals before him from which these were typed.

The Witness: I want to be sure when I answer your question. I am taking my time.

Mr. Taft: Surely. We intend to ask for the production of the originals from which these were typed in any case, perhaps this would be an appropriate time to make the request.

The Court: We are going to rule on this motion first, Mr. Taft.

The Witness: The last paragraph on page three and the final paragraph on page four are my verbatim transcription.

By Mr. Taft:

Q. From what? A. From the tape.

Q. And however, the one starting on the previous page on page two is more complete, is it not, of the same conversation? A. I wouldn't say it was.

242 By Mr. Taft:

Q. I would ask you with respect to each item on Government's Exhibit Number 3, I will ask you whether or not that particular record was sent to any other office other than Las Vegas? A. Yes.

Q. Could you identify which ones were sent to Washington or to any other place? A. This involves three communications.

The first one under the date of November 11, 1962 went just to Headquarters, Washington, D. C.

The conversation of December 31, 1962, the verbatim conversation, was sent to Headquarters, Washington, D. C., Louisville, Los Angeles, and Washington Field Office, Washington, D. C.

The conversation appearing, March 31, 1963, went to our Miami Division and Washington Field Office.

Q. Can you tell us how you were able to recall the fact that these particular items were sent to these places? A. That was done by a review of the files, the F.B.I. files.

Q. What records, if any, reflected the fact of where these were sent? A. The communications wherein these verbatims appear, would show dissemination on the front page.

Q. In other words, the originals from which Defendant's Exhibit Number 3 was typed, they would show where
243 they were sent? A. That is correct.

Q. And so that the log itself would show where those were sent and the verbatims would show where they were sent; is that correct? A. No. The log would not show dissemination.

Q. I believe you stated that the first item on the first page, was that a verbatim or from the summary, from the log? A. That is a summary. November 1, 1962.

Q. I understand.

Have you had an opportunity to review the summaries prior to testifying? A. Yes, I have.

Q. And where did you review them? A. The summaries? I reviewed the summaries here in Washington, D. C.

Q. What is that from, a file that was normally kept in Las Vegas or was that a file that was normally kept in Washington? A. The summaries are normally kept in the headquarters city where they originate.

Q. Would you—withdraw that.

Mr. Shedd, could you tell us when the device at the Fremont Hotel was removed from the hotel? A. The device was—

Q. I might say disconnected instead of removed.

244 A. It was disconnected, to the best of my recollection, was April 28, 1963.

Q. Was the device at all times that it was in the Fremont Hotel in the Executive Office of Ed Levinson, to the best of your knowledge? A. To the best of my knowledge, that is the only location.

Q. Were there any other devices in the Fremont Hotel at that time? A. I have no personal knowledge of any other devices located in the Fremont Hotel.

Q. In the ordinary course of your business, were you informed that there were any others at the Fremont Hotel?

Mr. Bittman: I object to the form of that question, Your Honor.

The Court: I will sustain the objection.

By Mr. Taft:

Q. If there were any other devices in the Fremont Hotel, would Mr. Robert Lee be aware of their existence?

Mr. Bittman: Object to the question.

The Court: Sustained.

By Mr. Taft:

Q. Do you have knowledge, personal knowledge, of the individual who was responsible for the installation of any and all devices at the Fremont Hotel?

245 Mr. Bittman: I object. It has been asked and answered.

The Court: I will sustain that objection.

By Mr. Taft:

Q. Mr. Shedd, do you—the summaries or the verbatim summaries that you prepared, do all of them show that the source of the information was an electronic device?

Mr. Bittman: I object, Your Honor. It is not relevant.

The Court: I will let the witness answer it.

The Witness: Would you please read the question?

(The Reporter read the question.)

The Witness: They show only the numerical designation.

By Mr. Taft:

Q. In certain instances they are also identified by the term "the informant"; is that not correct?

Mr. Bittman: Your Honor, I object. We have gone through this before. I think Mr. Taft has exhausted this area and certainly it is nonrelevant to the issues of this hearing.

The Court: Well, the witness has testified on this point, Mr. Taft.

Mr. Taft: Your Honor, I was asking whether every single one identified the source. He stated it was a number
246 and yet we have one here called "The Informant."

The Court: Yes, he has testified on that.

Mr. Taft: I wanted to find the reason for the difference.

The Court: We don't need repetition of the testimony already in the record, Mr. Taft.

By Mr. Taft:

Q. Can you state why any copies of these summaries were sent to the Field Office in Washington? I believe you stated that the last one was sent to the Field Office in Washington; is that correct? A. That is correct.

Q. Can you state why it would have been sent there?

Mr. Bittman: Your Honor, I am going to object to the question. I think it is immaterial as to why it was sent. It was already answered that it was sent. If the defendant

can go forward and show causal connection between that sending and the evidence in this indictment—

The Court: If the witness knows, I will let him answer it.

The Witness: In conducting the criminal intelligence investigation of Edward Levinson, I felt that it was important as the case agent that the Washington Headquarters as well as the Washington Field Office be aware from an intelligence point of view of the possible
247 political influence that Edward Levinson might be exercising in Federal circles.

Q. Would that be because of the occurrence of the name in this instance of Mr. Baker? A. Would you repeat that again?

Q. Was the reason for your concern in this instance because the name Mr. Baker appears, or it refers to Mr. Bob Baker? A. Yes, that could be my reason.

Q. It could, or it was, if you remember? A. That was my reasoning, right.

Q. When you sent this to the Washington Field Office, was it directed to any particular case agent or any particular investigator or any particular individual? A. The communication was directed to Washington. It was directed to the Headquarters at Washington, D. C. Miami, and Washington Field Office. The communication would have an official heading, to the attention of the Director, F.B.I., which is a standard form.

Q. Would that be at the Field Office as well, the same standard form? A. No, at the bottom of the page it would have a designation for the Field Office, just the name of the Field Office.

Q. Would it indicate in any way who at the Field Office was to, or it should, who at the Field Office this
248 communication should be brought to the attention of? A. No.

Q. Would the particular—withdraw that, Your Honor. I have asked that.

Did you receive any communications from the Washington Field Office which would refer to the name of Robert Baker? A. I couldn't answer that unless I had an opportunity to review the files in Las Vegas because I was not conducting any investigation of Robert Baker.

Q. Would that particular communication appear in File 92-739? Was that your— A. That would be an administrative duty in the office which wasn't assigned to me, as to whether or not it would go in that particular file. So I could not answer that.

Q. Do you know whether or not there was a case agent or a file number with respect to Mr. Robert Baker? A. I have no—

Mr. Bittman: I object unless he says at least when.

Mr. Taft: Any time between the period of January '61 to the present.

Mr. Bittman: January, 1961?

Mr. Taft: That is the first opening date in the indictment, I believe.

The Court: I will permit the question.

249 The Witness: I have no knowledge of between January 1, of '61, up until the time I actually arrived in the Field Division August 8 of 1962 whether or not there was a pending file on Mr. Robert Baker. Between the period of August of 1962 and the time that I left the Field Division I have no personal knowledge of any file, substantive file on Mr. Robert Baker.

Q. You stated, I believe, that you prepared reports from these verbatims and from the logs. Did any of the reports which you prepared mention in any way Mr. Robert Baker?

Mr. Bittman: I object, Your Honor. Asked and answered. He went all through this. He talked about the communications, the Field Offices, what would be in it; he went through these conversations in detail; the summaries and the verbatims. It is repetition and I object to it.

Mr. Taft: Your Honor, he stated he prepared reports as case agent from these summaries and from these logs; and

these reports would include among other things the information that came from the logs and the summaries.

I believe in tracing how this information was used it is important to know whether or not the information appearing here in any way appeared in any of these reports.

The Court: I will permit the question.

Mr. Taft: Which he prepared.

The Witness: The only reports that were prepared by me were on Edward Levinson, President of the Fremont Hotel.

250 There possibly could be a resummation of the information appearing in detail of that particular report or reports. But it doesn't necessarily mean that any of this information that is here would necessarily be in that report.

By Mr. Taft:

Q. You would in fact have to see the report before you could make that determination, is that right? A. That is correct.

Q. Were these reports that you prepared in which you are unsure whether or not this material appeared in them or not. Were these in turn also sent to Washington? A. They would be just, to Washington, Headquarters, Washington, D. C.

Q. Would they only be sent to the Headquarters, or to any other place? A. Unless I looked at the dissemination on the reports I could not specifically say where they went.

Q. Would the reports indicate in any way that some of the information included in them came from a device?

Mr. Bittman: I object again, Your Honor. We are talking about reports related to Edward Levinson and we are getting far afield from the scope of the hearing.

The Court: I think so, Mr. Taft.

Mr. Taft: I take it that the objection is sustained?

The Court: Yes, sir.

251 Your motion to suppress concerns the Baker conversations. We are limited to that.

Mr. Taft: I believe if at any time—

The Court: Conversations in which Mr. Baker is a participant is the way the motion is phrased.

Mr. Taft: I believe if at any time the reports on the Fremont Hotel came into the hands of Mr. Bittman or any other United States Attorney related to this case that the connection would be shown.

The Court: Well, the Court has ruled on it.

By Mr. Taft:

Q. At any time in reviewing these summaries or tapes or the logs, did these records reflect the fact that conversations were overheard in which Mr. Clifford Jones was a participant?

Mr. Bittman: I object, Your Honor. It's non-relevant. I am sure he can ask whether 15 other names are mentioned but it is non-relevant unless Baker was a participant or present.

The Court: Sustained.

Mr. Taft: Your Honor, I just state Mr. Jones is a co-conspirator for the record. We would contend although decisions are against us, that we have standing to obtain the materials from a co-conspirator.

The Court: All right. You have made your point.

252 Mr. Taft: No further questions.

The Court: Do you have anything, Mr. Bittman?

Mr. Bittman: Yes, Your Honor, two short questions.

Cross Examination

By Mr. Bittman:

Q. Special Agent Shedd, at my suggestion, did you review all of the logs relating to the Fremont Hotel? A. Yes, I did.

Q. And after conducting that review, did you come across any conversations in which Robert Baker could possibly have been a participant or was present other than those

you have before you that Mr. Taft submitted to you? A. No.

Mr. Williams: Your Honor, that is calling for a conclusion that I don't think this witness is qualified to make, "whether he could possibly have been a participant." I don't think—

The Court: We will substitute the words "as far as the witness knows." That is as far as he can testify anyhow.

The Witness: No. There was no other material that I found in the review of these logs that would show Mr. Baker as a participant or present, physically present.

By Mr. Bittman:

253 Q. To the best of your knowledge? Is that correct? A. That is correct.

Q. You conducted that review at my suggestion, did you not? A. That is correct.

Q. Now, there has been some mention here, Special Agent Shedd, about AIRTELS that were submitted to you, to other field offices, is that correct? A. That is correct.

Q. I won't repeat the offices but you did send these AIRTELS containing these verbatim conversations to other field offices, did you not? A. That is correct.

Q. I am speaking specifically of those conversations before you in which Baker was present or was a participant. Did you request any additional investigation with respect to those field offices? A. No.

Q. To the best of your knowledge, did they conduct any? A. No, they did not.

Q. How do you know they did not? A. They would have —if they had conducted any investigation, I would
254-260 have received a communication reflecting what was done but I received no communication from these divisions showing that they did anything in response to anything that I had sent them.

Q. Is there any other reason why you know or to the best of your knowledge you do not believe any investigation was conducted at those particular field offices as a result

of their receipt of this information? A. Prior to coming into Court and testifying I reviewed sworn affidavits submitted by the special agents in charge of the field divisions who received the communications that I sent out containing these verbatims in which they state from a review of their files that no investigation was conducted regarding Robert Baker.

Q. This was also done at my request, was it not? A. That is correct.

Mr. Bittman: No further questions.

Mr. Taft: Your Honor, could we have those affidavits produced?

Mr. Bittman: I have them here, Your Honor. I don't want to take up the time but after the proceedings today if Mr. Williams or Mr. Taft would like to examine them I will make them available.

Mr. Taft: I'd like them identified.

The Court: Very well, Since you are in agreement on this point. The Court is happy. You may have them identified and show them to counsel after concluding this session.

261 Mr. Williams: Your Honor, may we have the same understanding with respect to the affidavits to which Mr. Pennypacker alluded when he was on the stand regarding the Carlton microphone surveillance?

Mr. Bittman: We will be happy to have Mr. Pennypacker return and he can do the same thing. We have no objection.

Mr. Williams: We won't have to have Mr. Pennypacker return, Your Honor, we would just like to see the affidavit he alluded to when he was on the stand in response to your question.

The Court: Suppose you have them numbered too.

Mr. Bittman, while Mr. David is marking these exhibits, can you proceed with your cross examination of the witness?

Mr. Bittman: I am through, Your Honor.

Mr. Williams: We can be calling the next witness, Your Honor.

The Court: Mr. Taft, do you have any further questions of the witness?

Mr. Taft: No, Your Honor.

The Court: May the witness be finally excused since he is from out of town?

262 Mr. Taft: If he can just identify that group, and we will have them, or he can come back when the next witness is over, I think would be the easiest.

The Court: I was trying to conserve as much time as possible, gentlemen.

Mr. Bittman: Your Honor, if Mr. Williams has no objection, I would also like to submit to Agent Shedd at this time in connection with these affidavits a statement that he has prepared which indicates the date of these three conversations, the date of the communication that was sent as a result of these conversations and the offices which the communications were sent to, and this will assist him in expediting as to which affidavits were germane to which communication.

I will show this to Mr. Williams. There is no big secret about it. I believe it will expedite this proceeding if it would be handled in this fashion.

(Pause.)

The Court: The Court understands that is simply a schedule?

Mr. Bittman: That is all it is, Your Honor.

The Court: Prepared by this witness.

Mr. Taft: Your Honor, it has already been testified to orally. It reflects testimony already in the record.

263 The Court: Conceivably, this could be of assistance to the Court in reviewing the matter.

Mr. Williams: Can't we stipulate as to that to save time, that these were the affidavits he referred to?

Mr. Bittman: I would be happy to.

Mr. Williams: Let's do that.

The Court: The Court congratulates both counsel.

Mr. Williams: We want Mr. Dunfee.

The Court: Now, gentlemen, is Mr. Shedd finally excused?

Mr. Bittman: Yes, Your Honor.

The Court: You are finally excused, Mr. Shedd. And thank you.

The Witness: Thank you.

(Witness excused.)

The Deputy Clerk: Government's Exhibits 1 through 13 marked for identification.

(Thereupon, Government's Exhibits 1 through 13 were marked for identification.)

Mr. Bittman: Respectfully request the Court, these 13 affidavits, the Government will offer them in evidence at this time.

The Court: Any objection, gentlemen?

264 Mr. Williams: No. Our stipulation is that if the witness had been retained here, he would have testified that these were the affidavits to which he alluded in his examination; is that right?

Mr. Bittman: Just to clarify the record—there is no problem—there are some affidavits there that he probably would not identify because they do not relate to his testimony. The stipulation is that he would identify those that would be pertinent to his testimony.

Mr. Williams: That's right.

The Court: You offered them in evidence?

Mr. Bittman: Yes, Your Honor.

The Court: They will be received.

(Thereupon, Government's Exhibits 1 through 13, previously marked for identification, were received in evidence.)

Thereupon,

J. Roger Dunfee

was called as a witness on behalf of the defendant, was duly sworn, and testified as follows:

The Court: Mr. Williams, before you commence with the interrogation of this witness, would you and Mr. Bittman come to the bench, please?

265 (At the Bench:)

The Court: It is twenty minutes of four, I don't know how long you will want to sit this afternoon. If we are going to sit through the testimony of this witness perhaps we can take a brief recess before we go on with him. Would that best suit your convenience?

Mr. Williams: Whatever pleases the Court suits my convenience, Your Honor, but I was going to say this to you to guide you: I don't expect this witness will be very long, and maybe we could finish him and if Your Honor was going to adjourn at 4:00 o'clock—is that what you are going to do?

The Court: I prefer to adjourn at 4:00 o'clock, unless you gentlemen want to sit longer.

Mr. Williams: It may be that we will want to sit longer on other days. I will tell you, we didn't really get as much done at lunch as I had hoped we would, but I think we can certainly complete this witness this afternoon.

The Court: All right. Maybe that would be well. How long do you think you would be?

Mr. Williams: I think that fifteen minutes might do it.

Mr. Bittman: I don't anticipate any cross examination at all.

266 The Court: Suppose we go right through with it then.

Mr. Bittman: All right, Your Honor. Thank you.

Mr. Williams: Thank you, Your Honor.

(In Open Court:)

Direct Examination

By Mr. Williams:

Q. Would you state your full name please, Mr. Dunfee?

A. Yes, sir. My name is J. Roger Dunfee.

Q. What is your occupation, Mr. Dunfee? A. I am a clerk for the FBI.

Q. Where do you live, sir? A. Las Vegas, Nevada.

Q. How long have you been a clerk for the FBI? A. Approximately ten years, sir.

Q. How long have you lived in Las Vegas? A. February of 1961.

Q. How long have you been assigned to the FBI Office in Las Vegas? A. Since February, 1961.

Q. Where were you before that time? A. San Diego, California.

Q. Did there come a time when you had the duty assigned to you to listen on a microphone surveillance
267 directed at the office of Edward Levinson, the President of the Fremont Hotel? A. Yes, sir.

Q. And when did that assignment take place, sir? A. November of 1962.

Q. November of 1962? A. Yes, sir.

Q. And were there specified hours when you would listen to the conversations in his office? A. Yes, sir.

Q. What were those hours, Mr. Dunfee? A. From 8:00 a.m. until 5:00 p.m. in the evenings.

Q. How many days a week would you do that? A. Five days a week, sir.

Q. Did you have anyone assisting while you were listening to what was going on in Mr. Levinson's office? A. Would you please restate that?

Q. Did you have anyone assisting you while you were listening to what was going on in Mr. Levinson's office? A. I had no one assisting me, no, sir. There were other people present; there were other clerks there, yes, sir.

Q. What were those other clerks doing? A. They were also monitoring.

Q. They were listening in on what was going on in
268 other offices; is that right? A. Yes, sir.

Q. But only you were listening during eight to five as to what was going on in Mr. Levinson's office; is that correct? A. Yes, sir.

Q. And you worked at this five days a week? A. Yes, sir.

Q. Now, were there other monitors who relieved you and whom you relieved? A. Yes, sir.

Q. In other words, somebody would be there listening until you came on at 8:00 o'clock, and then when you finished listening at 5:00 o'clock, someone else would come on and listen; is that correct? A. Yes, sir.

Q. Where were you doing this listening? A. In the offices of the FBI.

Q. And how, if you know, were the voices in Mr. Levinson's office being carried to the FBI Headquarters? A. Would you please restate that?

Q. The offices of the FBI are at Eleventh Street in Las Vegas, aren't they? A. Yes, sir.

269 Q. South Eleventh Street; is that right? A. Yes, sir.

Q. 310? A. 301.

Q. 301 South Eleventh Street, Las Vegas. That is at a considerable distance from the Fremont Hotel, is it not? A. Yes, sir.

Q. Well, how were the voices of Mr. Levinson's office at the Fremont Hotel being carried, if you know, to the room where you were listening to those voices? A. I have no knowledge of that, sir.

Q. You don't know. Well, did you sit there with a headset on and listen to those voices? A. Yes, sir.

Q. Now, did you, at the time you were listening to the voices in Mr. Levinson's office, also simultaneously monitor other offices?

Mr. Bittman: I object as being irrelevant. We are only concerned here with the Fremont Hotel and those conversations in which Baker was a participant and was present.

The Court: I will sustain that objection.

Mr. Williams: Your Honor, I think that it goes to the question as to his capacity to hear all that was going on in the various places assigned to him.

270 Mr. Bittman: This is my whole—

The Court: In other words, he was simultaneously trying to monitor two?

Mr. Williams: Yes, sir.

Mr. Bittman: Your Honor, if he didn't hear certain conversations in which Baker was a participant, there is no problem because there couldn't be a causal connection in our indictment.

The Court: Just to clear up the record, I am going to permit the question.

Mr. Bittman: All right.

By Mr. Williams:

Q. Were you listening to more than one monitoring set, sir? A. No, sir.

Q. At no time? A. No, sir.

Q. You just listened to one? A. Right, sir.

The Court: Two years with one conversation.

By Mr. Williams:

Q. Now, did you simultaneously have a tape recording going? A. Yes, sir.

271 Q. Now, were there other persons in the same room listening to other conversations?

Mr. Bittman: I object.

The Court: I will permit the question.

The Witness: Would you please restate it?

By Mr. Williams:

Q. I said, were there other persons in the same room listening to other conversations? A. Yes, sir.

Q. Were they doing it with headsets? A. Yes, sir.

Q. So that way anyone else listening to anything else was not audible to you; is that correct? A. It had an amplifier. You could have the amplifier on or you could have earphones on.

Q. Now, at the time when you were listening to the Fremont Hotel offices, did you ever have the amplifier on? A. Yes, sir.

Q. And did others in the room have their amplifiers on at the same time? A. Yes, sir.

Q. So that you had voices being amplified in this room from several locations in the City of Las Vegas at 272 the same time? A. Whenever someone would enter an office, then we would turn the amplifier off and then insert the earphones.

Q. In other words, the amplifiers would be on—

Mr. Bittman: I am going to object to Mr. Williams keeping on saying "in other words." I believe he should ask the witness the question.

The Court: Overruled. Go ahead, Mr. Williams.

By Mr. Williams:

Q. Well, Mr. Dunfee, not in other words, but were the amplifiers on until such time as sounds would begin to emanate from the room, at which time the headset would be put on by the monitor; is that the way it worked? A. Yes, sir.

Q. At that time would you simultaneously begin a recording? A. Yes, sir.

Q. So that simultaneously you would be listening and you would be recording? A. It could be; yes, sir.

Q. Well, was it? A. Yes, sir.

Q. Well, is that the way you did it? A. Yes, sir, that's the way we did it.

Q. Is that the way you always did it? A. Yes, 273 sir.

Q. How long were you on the Fremont monitor,

how many months, if you were there for months? A. Well, from November of '62 until April of '63, sir.

Q. Was that your sole duty at the time, to monitor the Fremont electronic surveillance? A. Yes, sir.

Q. Now, did you keep any records of what you heard? A. Yes, sir.

Q. And what kinds of records were they, sir? A. When we would receive information over these microphones we would record them on a log.

Q. And when you say would record it, do you mean you would attempt a verbatim recordation of what you heard or a summary of what you heard? A. Summary, sir.

Q. Now, would the summary be made from what you heard through your ears when it was taking place, or would it be made afterwards by a playback from the record machine? A. No, sir, as—it would not be a verbatim. It would be a summary of what the conversation was, and we would take notes as the conversation would be on.

Q. Now, when you began this assignment of listening to what took place in Mr. Levinson's office, did someone instruct you as to what you were to listen to and what you were to record? A. Yes, sir.

Q. Who did that? A. The case agent.

Q. Who is that? A. Jack Shedd.

Q. What did he tell you? A. We were interested in the criminal intelligence program in which Mr. Ed Levinson was the subject and we were attempting to gain criminal information, skimming operations of the hotel, how much was being skimmed, where the money was going, who Mr. Levinson's associates are, and stuff in a general intelligence manner, the information we were looking for.

Q. Now, Mr. Dunfee, did you make notes and recordings of only conversations that related to those subject matters, or did you make notes and recordings of all the conversations in Mr. Levinson's office? A. Not all the conversations, no, sir.

Q. Well, now, when you would—well, would you discriminate as between conversations that were the covered

subject matter of Mr. Shedd's instructions and those
275 which did not; in other words, you log and record
those, and not log and record others? A. We would
make a notation any time someone would appear in Mr.
Levinson's office.

Q. Well, did you record and make a summary of all conversations that took place in Mr. Levinson's office? A. Not all conversations, sir.

Q. Well, what would be your line of distinction? What ones would you not record and make summaries of? A. The ones that weren't pertinent to the subject matter.

Q. So if a conversation was not pertinent in your judgment you didn't make any record of it; is that correct? A. We would make a notation, sir, that there was a conversation, but that it was not pertinent.

Q. Now, I want to direct your attention, Mr. Dunfee, to Defendant's Exhibit No. 3, the entry at page 1, dated December 31, 1962, and I will ask if you made the summary from which this was transcribed? A. Yes, sir, I did.

Q. You did. And I will ask you if you made the notes or the summary, whatever you would call it, appearing at the
bottom of the page, page 1 of Defendant's Exhibit
276 No. 3? A. No, sir, I did not.

Q. Who made that? A. I do not know.

Q. Well, weren't you monitoring on December 31, 1962? A. Yes, sir, I was.

Q. Well, is this conversation different from the one that you monitored between Mr. Baker and Mr. Levinson on December 31, '62? A. Yes, sir, that is the same conversation.

Q. Same conversation? A. Yes, sir.

Q. Well, do you know from what that conversation was made?

Mr. Bittman: I object, Your Honor. He said he didn't have any knowledge.

Mr. Williams: Your Honor, we have here one and the same conversation recorded twice, once apparently in summary form, and once in unilateral verbatim form. He said he made one; he doesn't know who made the other.

Mr. Bittman: Agent Shedd just testified—

Mr. Williams: I don't care, Your Honor, what Agent Shedd said.

Mr. Bittman: We are not playing games. He said he didn't make the other one.

277 The Court: Gentlemen, wait a minute.

I will permit the question so you can clarify the matter for the record.

Mr. Williams: Thank you, sir.

By Mr. Williams:

Q. Can you explain that, sir? A. What is your question again, please?

Q. I am going to direct your attention first of all to the language appearing in the center of the pages of Defendant's Exhibit No. 3 for identification, and ask you if that is language from your logs.

Mr. Bittman: I am going to object as asked and answered. A specific question was asked, and he directly responded before.

The Court: Overruled.

The Witness: Yes, sir, that is mine.

By Mr. Williams:

Q. That is yours. Now, did you make that log entry contemporaneously with what you heard? A. Yes, sir.

Q. And that was live talk, it was not recorded talk; is that right? A. This here is recorded.

278 The Court: Now what are you referring to, Mr. Witness? Is that the conversation in the middle of the page?

Mr. Williams: In the middle of the page, yes, sir.

The Court: All right.

By Mr. Williams:

Q. Now, Mr. Dunfee, had you vere heard Robert Baker speak before? A. No, sir.

Q. When you make your note you said: "Ed answered and spoke to Bobby (Baker?)."

From where did you get the information that it was Bobby Baker? A. I didn't know it was Bobby Baker, sir.

Q. You didn't know it was Bobby Baker? A. No, sir.

Q. What was the basis of your surmise that it was Bobby Baker? A. The case agent, Mr. Shedd, advised me that Bobby Baker was an associate and friend of Ed Levinson, and asked me to be aware of this. He wanted me to be aware of this so he advised me of it.

Q. And he told you when Bobby Baker talked to
279 Mr. Levinson to make notes on those conversations; is that right?

Mr. Bittman: I object to that, Your Honor.

By Mr. Williams:

Q. Is that right?

The Court: I will permit the question.

The Witness: Would you repeat the question?

By Mr. Williams:

Q. He told you when Mr. Levinson talked to Bobby Baker that you should make notes on those conversations; is that right? A. Any conversations, sir.

Q. With Bobby Baker? A. If Bobby Baker would have called.

Q. And he told you this in November of 1962, is that correct, when you began work on this case?

Mr. Bittman: I object. That is not the testimony.

Mr. Williams: I am asking him, Your Honor. I think this witness—

Mr. Bittman: Wait a minute. That is misleading.

The Court: The testimony of the witness, as the Court recalls it, was that among his instructions from Mr. Shedd was that he was to make notes on conversations
280 relating to associates of Ed Levinson.

Mr. Williams: Yes, sir.

The Court: The Court takes it that Mr. Baker was an associate of Mr. Levinson. I believe Mr. Baker testified to that effect.

Mr. Williams: That's right, sir.

The Court: So we really don't have any issue.

Mr. Williams: I think we do, Your Honor, because the witness also said that Mr. Shedd mentioned specifically Mr. Bobby Baker, and that is what I want to explore as to time.

The Court: Whether Mr. Baker was singled out for special attention; is that your point?

Mr. Williams: Yes, sir.

The Court: You may ask that.

By Mr. Williams:

Q. In November, when you went on this assignment did Mr. Shedd mention Bobby Baker to you? A. No, sir, he did not.

Q. When did he mention Bobby Baker to you? A. I can't recall the exact date of that, sir.

Q. Well, was it— A. It was sometime prior to this, probably the latter part of November, I would guess.

281 Q. The latter part of November.

What did he say to you when he mentioned Bobby Baker to you?

Mr. Bittman: I object. He asked that question; that was answered. This is repetitious again.

The Court: I will permit the question.

The Witness: Mr. Shedd advised me that Bobby Baker had come to his attention and that he is a friend and associate of Ed Levinson, and if anything came in about this, bring it to his attention.

By Mr. Williams:

Q. And you fix that in point of time in November; is that correct? A. Yes, sir, I would, to the best of my knowledge or recollection it was in November, sir.

Q. Now, when you wrote down in your notes that "Ed answered and spoke to Bobby," did you know it was Bobby Baker? A. No, sir, I did not.

Q. Was that only a surmise on your part? A. That was an assumption, yes, sir.

Q. What did you base the assumption on?

Mr. Bittman: I object. Asked and answered, Your Honor.

We are going round and round with this.

282 The Court: It may be clear to you, Mr. Bittman; it is not clear to the Court. If this witness can enlighten the Court, I would like to have it.

The Witness: Because in this conversation Mr. Levinson mentioned an inauguration party and a donation, and that's where I got my assumption, my basis for that.

By Mr. Williams:

Q. You couldn't hear the other end of the conversation Mr. Levinson was having, could you? A. No, sir, I could not.

Q. He didn't identify the man to whom he was speaking as Bobby Baker? A. No, sir, he did not.

Q. And you assume that because there was a discussion of an inauguration or a donation to a campaign that it was Bobby Baker? A. Yes, sir.

Q. Well, did you know who Bobby Baker was as of December 31, 1962?

Mr. Bittman: I object. Asked and answered.

The Court: I will permit the question.

By Mr. Williams:

283 Q. Do you know what his role was? A. Mr. Shedd advised me, I believe, sir, to the best of my recollection, it was in November of '62, who Bobby Baker was.

Q. That is what I asked you previously, Mr. Dunfee. What did he tell you about Bobby Baker that made you

assume that when there was a conversation about a political contribution and an inauguration that Bobby was equated with Bobby Baker?

Mr. Bittman: Your Honor, I object. Asked and answered. In this particular document it says Baker question-mark. I think we are make a mountain out of a mole-hill here.

The Court: Overruled.

Do you understand the question, Mr. Dunfee?

The Witness: Yes, sir.

The Court: You may answer it.

The Witness: A couple days prior to this conversation there were two gentlemen in Mr. Levinson's office and Mr. Levinson was discussing with these two individuals about an architectural deal with Zick and Sharp, and Mr. Levinson identified Mr. Baker to these two individuals.

By Mr. Williams:

Q. And were you listening at that time? A. No, sir. I was not.

284 Q. Well, did someone tell you about that conversation prior to December 31, 1962? A. No, sir.

Q. Well, what was it about the fact that Zick and Sharp were discussed a couple of days before, at a time when you weren't listening, that caused you to believe that the Bobby you heard was Bobby Baker? A. That was—I reviewed the logs previous to this, and found this information in the logs, where this had been recorded.

Q. When did you review the logs? A. On a Monday, sir.

Q. On what Monday? A. Well, the thirty-first, sir.

Q. You reviewed them on Monday, December 31st? A. Yes, sir.

Q. And they were somebody else's logs; is that correct? A. Yes, sir, they were.

Q. Was that your regular practice to review someone else's logs in preparation for your own work? A. To keep aware of what was going on; yes, sir.

Q. Well, would you regularly read the logs of your predecessors on assignment for that particular day?

285 A. Yes, sir, I would.

Q. When would you have time to read those, sir?

A. Well, there was plenty of time actually.

Q. In other words, the man who was on the microphone ahead of you was on for an eight-hour period; is that right? A. Yes, sir.

Q. And you would read what had happened during the eight hours prior to your taking the earphones; is that correct? A. That is correct.

Q. And you do this when? A. When I come in to work, sir.

Q. When you came in to work. Would you do that before you began listening? A. Yes, sir.

Q. I see. Now I am going to ask you, Mr. Dunfee, if you know of your own knowledge who prepared the conversation or who prepared the notes or the verbatim transcript of the conversation appearing at the bottom of Defendant's No. 3 for identification?

Mr. Bittman: I object. Asked and answered. He said he didn't know.

The Court: I think that is correct, Mr. Williams.

286 Mr. Williams: I did not recall that. If that is so, I don't see any harm that would come—

The Court: Let's not have repetition.

By Mr. Williams:

Q. You don't know. Is what Mr. Bittman says now in court the fact, that you don't know?

Mr. Bittman: I object. It is what the witness said, not what I am saying. I just made an objection.

The Court: Can you answer that, sir? Do you know who made the transcripts at the bottom of the page?

The Witness: No, sir, I do not.

The Court: All right. Let's ask the next question.

By Mr. Williams:

Q. Now, in reading the logs in the regular course of your business while you were engaged in monitoring the Fremont, did it frequently happen that the language of the informants would be used to identify the microphone—

Mr. Bittman: I object, Your Honor.

The Court: I think you have been into that, Mr. Williams.

Mr. Williams: I haven't asked him this, Your Honor.

The Court: I think you have evidence of that
287 from the witness who was last on the stand who was in charge of the office. I don't think you need corroboration from this witness.

Mr. Williams: Well, it is our position, Your Honor, and I think we can demonstrate this, and I think that it will be testimony most interesting to Your Honor, that electronically surveyed conversations are not identified as such in the reports that are made by the agents in charge.

The Court: Yes, I am aware of that, Mr. Williams, and I think you have testimony in this case from previous witnesses superior to this man.

Mr. Williams: Your Honor's ruling is I may not ask him?

The Court: Yes. It would be purely cumulative, Mr. Williams. We have got to get along with this hearing.

By Mr. Williams:

Q. Now, is this, Mr. Dunfee, the only conversation that you heard in which Mr. Baker was a party, the one of December 31, 1962? A. Sir, I can't even say that was Mr. Baker.

Q. Well, now, prior to being informed that you should be aware of Mr. Bobby Baker, were there conversations that you heard Mr. Levinson have with persons
288 whom you could not identify? A. I'm sorry, I didn't understand that question.

Q. Let me ask you in a more simple fashion.

Mr. Bittman: Your Honor, I would like Mr. Williams to move away a couple feet from the witness.

Mr. Williams: I have to point out to him the difference between the two conversations.

By Mr. Williams:

Q. Does it bother you? A. Yes, sir. Please stand over there.

Q. Very good.

Mr. Dunfee, during the time that you monitored the office of the Fremont Hotel, did you hear people talk in that office either person to person or on the telephone whom you could not identify? A. Yes, sir.

Q. Did that happen often? A. Yes, sir.

Q. And when you couldn't identify the persons, would you indicate that it was an unidentified male or female talking to Mr. Levinson? A. Yes, sir.

Mr. Williams: I have no further questions.

Mr. Bittman: I have a few short questions, Your Honor.

289 Cross Examination

By Mr. Bittman:

Q. With respect to that conversation in which you read in one of the prior logs it referred to Zick and Sharp, that conversation did not indicate that Baker was a participant of that conversation, did it? A. No, sir.

Q. I see. Now, have you reviewed all the conversations in the Fremont log which you monitored? A. Yes, sir.

Q. And how many times have you done that? A. Three times, sir.

Q. At my request? A. Yes, sir.

Q. Now, have you found any conversations, to the best of your knowledge, other than the conversation of December 31st, 1962 where it appears that Baker was present or was a participant? A. Would you repeat that please?

Q. Certainly. With respect to all the conversations which you monitored, except the conversation of December 31st,

1962 which you indicated you did monitor, did you find
any other conversations which it appeared Baker
290 was present or was a participant? A. No, sir.

Q. Now, at my request did you review all the
logs at the Fremont Hotel, even those conversations which
you did not monitor, with the same instructions, to at-
tempt to find out whether or not you could find any con-
versation which even remotely appears whether Baker was
present or not present; did I give you those instructions?
A. Yes, sir, you did.

Q. Were those instructions to include all the logs, even
those you did not monitor? A. Yes, sir.

Q. From the results of that review, and to the best of
your knowledge, does it appear that Baker was a par-
ticipant or present at any other conversation? A. No,
sir.

Mr. Williams: Your Honor, since Mr. Bittman has made
this inquiry beyond the scope of the direct about all
the logs in the Fremont Hotel, I think we are entitled
to have those logs for purposes of examining them, and I
respectfully renew our request because of Mr. Bittman's
question directed to this witness as to whether or not he
had reviewed all the logs, just as Mr. Bittman asked Mr.
Baker this morning on the basis of a question that I
asked yesterday, about these private business trans-
291 actions in depth, I would see the logs of the Fre-
mont Hotel.

The Court: Of course, the present ruling is that you
have access to those logs in which Mr. Baker had con-
versations.

Mr. Bittman: I have no further questions.

The Court: Anything further, Mr. Williams?

Mr. Williams: No, sir.

The Court: You may step down.

May the witness be finally excused, gentlemen?

Mr. Williams: Yes, sir.

The Court: Do you have any further need for the witness, Mr. Bittman?

Mr. Bittman: No, Your Honor.

Do you agree he is excused?

Mr. Williams: Oh, yes.

Mr. Bittman: Is Mr. Shedd excused?

Mr. Williams: I did agree to that.

(Witness excused.)

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**EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS OF
NOVEMBER 17, 1966**

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PROCEEDINGS

The Court: Come to order.

Mr. Bittman: The Government at this point, Your Honor, would like to renew its motion to have the Court deny defendant's motion to suppress, on all the grounds that I previously stated, more particularly Mr. Baker's testimony in which the defendant himself makes no specific allegations whatsoever with respect to the Black situation, and there were observations by his attorneys when I asked him to make a specific allegation with respect to the Fremont and with respect to the Sigelbaum matters and in view of this and I will not repeat all of my—the chronology of the other arguments that I have made to the Court. In view of that, the Government would like to renew its motion at this time.

The Court: Same ruling.

Mr. Bittman: At least, I think, Your Honor, I would like to respectfully ask the Court to have Mr. Williams make an offer of proof at this time, as to what he is attempting to show by calling these agents to the witness stand.

I think the evidence at this time is getting cumulative; it isn't proving anything and in view of the unspecific nature of their charges, I think at least a minimum show-

ing by Mr. Williams of what he is attempting to
296 prove would be helpful.

The Court: At the outset, Mr. Bittman, I indicated I would permit Mr. Williams to conduct this interrogation, and I adhere to that position. You may proceed, Mr. Williams.

Mr. Williams: Would you call Mr. Ridenhour, please?
Whereupon,

Jack Ray Ridenhour

witness called for examination by counsel for defendant, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williams:

Q. Would you state your name, please, Mr. Ridenhour?

A. Jack Ray Ridenhour.

Q. Will you spell that for the reporter? A. R-i-d-e-n-h-o-u-r.

Q. Where do you live, Mr. Ridenhour? A. In Dolton, Illinois.

Q. How long have you lived there? A. Approximately two years.

Q. Prior to that, where did you reside? A. In Las Vegas, Nevada.

Q. How long did you live there? A. Approximately two and a half years.

Q. What is your employment, Mr. Ridenhour?

297 A. I am an investigative clerk.

Q. Investigative clerk for whom? A. The Federal Bureau of Investigation.

Q. How long have you been so employed? A. You mean for the F. B. I.?

Q. Yes, sir. A. Since 1958.

Q. Directing your attention to the year, 1963, were you at that time attached to the Las Vegas Office of the F. B. I.?

A. Yes, I was.

Q. Directing your attention specifically to 1962, did there come a time when you were given duties with respect to monitoring conversations in the office of Mr. Levinson of the Fremont Hotel? A. Yes, I was.

Q. When were you given those duties? A. From November of 1962 until March—No, April of 1963.

Q. Who gave you those duties? A. Special Agent in charge of the Las Vegas office.

Q. Who is that? A. Mr. Dean Elson.

Q. Who instructed you with respect to the performance of those duties? A. The case agent.

Q. Who was that, sir? A. Jack Shedd.

Q. And what instructions were given to you? A. To monitor any conversation coming in over the amplifier and record such conversations.

Q. Emanating from where? A. From the office of Eddy Levinson.

Q. Were you told to listen for any particular subjects of conversation? A. Anything to do with the criminal intelligence program.

Q. Were any instructions given to you, then, around November of 1962 or thereafter with respect to the defendant in this case, Robert Baker? A. Would you repeat the question, please?

(The reporter read the question.)

The Witness: Not until the later part of 1962, late in 1962. In November.

By Mr. Williams:

Q. In November of 1962? A. Yes, sir.

Q. What instructions were given you in November 299 of 1962 with respect to Robert Baker? A. We were advised he was an associate of Eddy Levinson, and

that was the instruction, was the only mention that was given to us.

Q. You were advised that he was an associate? A. Yes, sir.

Q. And what were you told to do about that fact? A. To make notes of any conversations between the two parties.

Q. Were you told to listen with respect to any subject matter between those parties and to note any specific types of conversations that they had? A. Not in particular.

Q. Were you told in general? A. In a general—

Q. What were you told in general? A. To record any conversations between the two.

Q. Record any conversations between the two? A. Yes.

Q. Now, at the time that you were given those instructions had you heard Mr. Baker speak? A. No.

Q. You had not? A. No, sir.

Q. When, Mr. Ridenhour, did you perform your duties and I have reference to what portion of the day—?

300 A. Well, it varied, from the morning shift or to the evening shift.

Q. Would you tell us what the shifts were? A. Approximately say from eight to four and from four to midnight.

Q. Eight to four and four to midnight? A. Yes.

Q. Was there a shift from midnight to eight A. M.? A. At times there was.

Q. Well, while you were working on this particular matter, did you ever work the midnight shift? A. To the best of my recollection, yes.

Q. Well, is it the fact that the Levinson office was under electronic surveillance 24 hours a day most of the time? A. No.

Q. It is not. Was it under 16-hour a day surveillance most of the time? A. To the best of my memory, yes.

Q. And when it was under 16-hour a day surveillance, the midnight to eight shift would be the one not sitting? A. That is correct.

Q. Now, during the time that you were monitoring Mr. Levinson's office, were you simultaneously monitoring other offices? A. I was listening to other amplifiers, yes.

Q. How many other amplifiers? A. Approximately 4 to 6.

Q. 4 to 6 amplifiers. I take it these were electronic surveillances of places other than the Fremont Hotel? A. Yes.

Q. Other than the Fremont Hotel? Were they or were they not? A. Yes.

Mr. Bittman: I object. He just answered it, Your Honor.

The Court: That has been cleared up, Mr. Bittman. Proceed, Mr. Williams.

By Mr. Williams:

Q. Now, Mr. Ridenhour, when you were monitoring a number of individual electronic devices when you heard a sound emanating from one was it your practice forthwith to record that sound? A. Yes.

Q. So, is it the fact, Mr. Ridenhour, that while you were conducting simultaneous monitoring tasks you would record everything that came over any one of the devices? A. That is correct.

Q. That is correct. Now, did there come a time—before I ask you that, Mr. Ridenhour, were you able to hear telephone conversations? A. Only one side of the conversation.

Q. One side. Now on all occasions were you able to identify the persons on the other end of the telephone conversation?

Mr. Bittman: Your Honor, I respectfully request that at least this line of inquiry be restricted to the Fremont Hotel.

Mr. Williams: If it isn't clear, I am asking him about the Fremont Hotel, and all my questions will be directed to the Fremont.

The Court: With that understanding, you may proceed.

The Witness: Would you repeat the question?

Mr. Williams: Yes. Would you read it?

(The reporter read the question.)

The Court: That is, of course, limited to the Fremont Hotel conversations which you monitored.

The Witness: Yes, sir.

The Court: Can you answer Mr. Williams' question?

The Witness: Not unless the party that we could hear identified the subject.

By Mr. Williams:

Q. How often would you say percentagewise you
303 did not know to whom Mr. Levinson was talking
when he was talking on the telephone? A. To the
best of my knowledge, I couldn't give you a percentage.

Q. You couldn't give a percentage? A. No, sir.

Q. Were there a number of occasions when you listened
to conversations that were being conducted face-to-face in
Mr. Levinson's office? A. You mean with other parties
in the office?

Q. Yes, with other people. A. If they were called by
name, yes.

Q. Now, I don't think you understand my question. Were
there a number of occasions when you listened to conversa-
tions, nontelephone conversations in Mr. Levinson's of-
fice? A. There was times, I could not identify the person.

Q. I am not asking you at this point, Mr. Ridenhour,
about identifying or not identifying—I am asking if you
heard conversations in Mr. Levinson's office when he talked
to people in his office there present. A. Yes, there was.

Q. In fact, you heard all of the conversations that took
place while you were monitoring in his office, didn't
304 you? A. Yes, sir.

Q. Were there not a number of occasions when
you did not?

Mr. Bittman: I object to that. He heard what he heard.

Mr. Williams: Well, he just answered the question, Your Honor.

Mr. Bittman: Well, I don't think this witness is in a position to testify he heard everything.

He heard what came over the amplifiers.

The Court: You can take it up on the cross examination and clarify whatever matters that need to be clarified.

By Mr. Williams:

Q. Didn't the amplifier pick up very clearly any conversation in Mr. Levinson's office? A. To the best of my knowledge, they did.

Q. Well, you know, don't you, Mr. Ridenhour? A. I have no knowledge of the range of the listening device.

Q. You were listening there for six months, weren't you? A. Approximately, yes, sir.

Q. Well, you could hear clearly the conversations
305 that took place in Mr. Levinson's office, couldn't you? A. I could hear the conversations that came in over the amplifier.

Q. Do you know how big Mr. Levinson's office was? A. No, sir.

Q. Did you ever see it? A. No, sir.

Q. Were you told how big it was? A. No, sir.

Q. Was there ever a time when there were conversations going on which you could not distinguish what was being said? A. Yes, sir.

Q. Was that often? A. Not to my knowledge, no.

Q. Not to your knowledge. Were there a number of times, Mr. Ridenhour, when you were not able to identify the voice of the conversant to whom Mr. Levinson was talking? A. That is correct.

Q. I am going to hand you, Mr. Ridenhour, what has been marked as Defendant's Exhibit No. 3 for identification and direct your attention to page two. Is that conver-

sation appearing on the bottom of page two, one
306 that you monitored? A. "On 3/31 of '63," (reading)
yes, it is.

Q. Can you tell us what time of day that was? A.
Approximately 1 o'clock in the afternoon.

Q. You can fix that at one? How is it that you are able
to fix that at 1 o'clock? A. On our logs they record the
date and the time.

Q. And you have looked at your logs in preparation to
testify here today? A. Yes, I have.

Q. Is that how you are able to say? A. I have com-
pared this with the conversation in the log.

Q. When you listened to that conversation, Mr. Riden-
hour, did you make simultaneous notes of the conversa-
tion or did you record it and make notes from the record-
ing? A. I made notes and recorded it at the same time.

Q. You made notes and recorded it at the same time.
Well, are those notes there, or what is the typewritten
version of your long-hand notes, the notes that you made
during the conversation itself? A. Yes, it is, sir.

Q. On that same day, did you hear another conversa-
tion? A. No, sir.

Q. You heard only one conversation? A. The one
307 conversation.

Q. Now, on page three of that exhibit, there is
the prelude, on the page that follows. "On the same
date, LV 90-C* advised LEVINSON received an incoming
call from BOBBY who is believed to be ROBERT BAKER, sec-
retary to the majority leader of the United States Senate."

Now, who made the notes on that conversation? A.
That appears to be the verbatim from the transcription,
from my notes.

Q. In other words, is this one and the same conversation?
A. Yes, sir, it is.

Q. Did you prepare the verbatim? A. No, sir, I did not.

Q. So that, here we have the same conversation, is that
correct? A. It appears so.

Q. Can you explain to us, Mr. Ridenhour, the language at page 2, the middle of the page, right after the words, "Ed talking to BOBBY—(cut 51)", and at the end of the conversation, "cut 56"—what does that mean? A. Cut 51 is an indication on the tape where the information started from. Cut 56 indicates where it stopped.

Q. Well, did you write down "Cut 51" as you
308 began to take the verbatim notes? A. Yes, sir, I did.

Q. And then, you put down "Cut 56" at the end, is that correct? A. That is correct.

Q. What appears below cut 56 at the bottom of page 3 is the verbatim as taken from the recorder is that correct? A. I am sorry; I am not clear on your question.

The Court: Suppose you rephrase that, Mr. Williams, I am not clear on it either.

By Mr. Williams:

Q. Yes, Your Honor. I will. I say, what appears at the bottom of page 3 and on page 4 is the verbatim of what you noted during the conversation?

Mr. Bittman: Your Honor, I object. If he didn't make the verbatim he wouldn't know. He said he didn't do it so I object to the question.

The Court: Mr. Williams, do you mind trying again? Maybe we can get a question that is clear to everybody.

Mr. Williams: May I recite, Your Honor, what I am seeking to elicit from him? As I understand the testimony, the conversation at the bottom of page 2 is reported by this witness in long hand notes made
309 simultaneously with the conversation, and the conversation beginning at page 3 is a transcript made from the recording. As I understand his answers. Is that correct?

The Court: Is that correct, Mr. Witness?

The Witness: Yes, Your Honor.

By Mr. Williams:

Q. Is that correct? So that the conversation at the bottom of page three purports to be exactly what was taken on the tape? A. Would you repeat? I am sorry, sir.

Q. I said, so that the conversation at the bottom of page 3 at least purports to be exactly what was taken on the tape. A. It appears to be.

Q. Now, prior to March 31, of 1963, did you know who Robert G. Baker was? A. Only by name and the agent telling us who he was.

Q. Who did he say he was?

Mr. Bittman: I object, Your Honor. This is repetitious. He went into it 15 minutes ago in detail.

The Court: I think we have had sufficient description of that.

By Mr. Williams:

310 Q. Look, if you please, Mr. Ridenhour, at page 2 again. I call your attention to the fact that in your conversation—and look at the very bottom, will you please, at page 3 of the conversation that you made notes of—I don't think I will be able to call you tonight, well, oh, kay, I'll get the info and get on the guy about my cigars, oh kay.

Do you see that? A. Yes, sir.

Q. Now, why is it, if you know, that the conversation which purports to be taken from the tape, and therefore verbatim doesn't have that? A. I do not know, sir.

Q. You don't. I call your attention over here at page two, beginning here in this conversation, can you see this? A. Page three?

Q. Page three. I beg your pardon. You wrote down, "Hell I don't know a dam thing about it." Is that correct? Right after the reference to Mr. Burton? A. That is the note on the log.

Q. Now, on the verbatim, we have bracketed, "(obscene)". "I don't know a damn thing about it . . ." Can you ex-

plain that? A. I don't know anything about the verbatim log, sir. I typed in and wrote in what I heard.

311 Q. Do you know who made the transcript from the verbatim log? A. I presume—the case agent.

Q. And who would that be? A. Jack Shedd, sir.

Mr. Williams: That is all I have, Your Honor.

Cross Examination

By Mr. Bittman:

Q. One of your instructions, Mr. Ridenhour, was to designate, if you could, all associates of Edward Levinson, isn't that true? A. Yes, sir.

Q. And to assist you in possibly identifying all associates of Edward Levinson and to assist you in your functions, you were given certain names by the case agents, isn't that correct? A. That is correct.

Q. And that was only to help you identify them when certain names were mentioned, isn't that true? A. That is true.

Q. It is in this connection that Baker's name was mentioned to you as an associate of Edward Levinson,
312 is that true? A. That is true.

Q. Did anyone indicate to you any particular special status that Robert G. Baker had? A. No, sir.

Q. Are you aware of any investigation that was then being conducted with respect to Baker? A. No, sir.

Q. As far as you know, it was the Levinson investigation, is that correct? A. That is correct.

Q. Now, to the best of your knowledge what was the F. B. I. procedure with respect to the tape recordings? What happened to them after the recordings were made? A. After the recordings were made we removed the tapes at the end of the day and when the reel was finished and put it in a designated drawer for the case agent and from there I do not know what happened to the tape.

Q. And you would also submit your summary log to the case agent, is that correct? A. That is correct.

Q. Wouldn't there be a time when these tapes would come back to you? A. We would have a drawer
313 marked for erase tapes and we would take any tapes there and erase them but we have no idea what tapes they were.

Q. You wouldn't play those tapes back again? A. No, sir.

Q. There would be a drawer there for tapes and you would erase them and use them over again, is that correct? A. Yes, that is correct.

Q. This is a normal course of your duties? A. Yes, sir.

Q. Was it on many occasions that there were unidentified individuals in Edward Levinson's office or on few occasions to the best of your knowledge? A. To the best of my knowledge there was a few occasions of unidentified subjects.

One of your duties was to identify individuals, if you could, isn't that correct? A. That is correct.

Q. Have you examined all of the Fremont logs pursuant to my instructions? A. I have, sir.

Q. With respect to the logs, which you, yourself, monitored, how many times have you reviewed those? A. Approximately 3 or 4.

Q. And you have also examined Defendant's Exhibit 3, have you not? A. I have, sir.

Q. Are there any conversations to the best of your knowledge which appear in the Fremont logs and which do not appear on Defendant's Exhibit 3 which relate to any conversation which, in which it appears Baker was present or was a participant—in any conversation? A. To the best of my knowledge, no, there are no other conversations.

Q. And did I also instruct you in this connection that if there is even a remote possibility that Baker was present or participant you should let me know so we can turn it over to the defendant, is that correct? A. That is correct.

Q. How many times did you examine all of the Fremont logs pursuant to my request, even those conversations which you did not monitor? A. Three or four times.

Q. With respect to your review of all of the logs, did I give you similar type instructions that if there is any remote possibility that Baker could have been a participant or present you should immediately let me know so
315 I can turn it over to the defendant? A. That is correct.

Q. Did you find any other conversations? A. I did not find any other conversations.

Q. Do you have any way of knowing whether or not on March 31, 1963, that Edward Levinson was positively talking to Bobby Baker? A. I do not.

Q. This is one of those conversations where it could have been so it was turned over, is that correct? A. Mr. Levinson talking to a party named Bobby, that is all I know.

Mr. Bittman: I have no further questions.

The Court: Mr. Williams, anything further?

Mr. Williams: I have one question here, Your Honor.

Redirect Examination

By Mr. Williams:

Q. Directing your attention to 3/ 31/63, at the bottom of page two, did you write that language, conversation between Edward Levinson and Robert G. Baker? A. No, I did not, sir.

Q. You didn't write that? A. No, sir.

Q. You didn't write that. You didn't describe the
316 conversation? A. I did not put the top line there.

Q. When you would write on the log, the conversation, would you write down who the participants were? A. For example, on the first, "Ed back in office. Ed talking to BOBBY," that would be my first notations on the log.

Q. And then, did you indicate who you thought Bobby was on the log? A. No, sir, I did not.

Q. Who made the judgment that it was Bobby Baker? A. I do not know, sir.

Q. You don't know who made that judgment? A. I—

Q. Well, is that true, Mr. Ridenhour, of all of the telephone conversations, that someone else made the judgment with respect to the party on the other end? A. Would you repeat that question?

Q. Yes. Is that true with respect to the telephone conversations that you heard when you were monitoring Mr. Levinson's office—someone else made a judgment as to who the party on the other end was? A. I would make a note of the names that were mentioned and that would be as far as my judgment went.

Q. And so that if a judgment were made as to
317 who was on the other end someone else would make that judgment? A. To the best of my knowledge.

Q. Did you have other notations in conversations that you monitored that there was a Bobby to whom Levinson talked during that 7 months? A. No. To the best of my knowledge this is the only conversation that I had that Bobby was mentioned.

Q. The word, Bobby? A. Yes, sir.

Q. When you received your instructions with respect to Bobby Baker, were you told to make a note of conversations with persons named Bobby, is that what it was? A. Who do you mean—by instructions?

Q. You told us about instructions that you received. A. I received instructions from the case agent, yes.

Q. Yes. And he told you whenever you heard the word, Bobby, to make a notation and transcribe that conversation? A. Not a special note, sir, no, sir.

Q. Just a general note? A. Just a general—

Q. This is true of other persons he told you to make notes on, was it not? A. That is correct.

Q. Were there any other persons to whose attention you were directed other than Baker when you were listening on Levinson? A. I don't understand your question.

Q. Were there any other names given to you by the agent in charge when he gave you instructions on this monitoring job? A. There was other names, yes, sir.

Q. How many others? A. Oh, approximately 2 or 3.

Q. Two or three?

Now, Mr. Ridenhour, were you told at the time that you were given your instructions that you should disclose to no one that you were conducting this monitoring?

A. All our work was done in a confidential sort—

Q. Was it explained to you at that time that electronic monitoring of conversations without consent in the State of Nevada was a felony?

Mr. Bittman: I object to this type of inquiry, Your Honor.

The Court: Sustained.

Mr. Bittman: Are you through?

Mr. Williams: Yes.

Mr. Bittman: One question, Your Honor.

319 Recross Examination

By Mr. Bittman:

Q. With respect to the logs that you would take notes—the summary and log—Mr. Ridenhour, what, if anything, would you do with them after you completed that particular log? A. At the end of the day they would be turned over to the case agent.

Q. You wouldn't see them again, would you? A. That is correct.

Q. In fact, you haven't seen them again until you were instructed to review them pursuant to our instructions, isn't that true? A. That is right.

Mr. Bittman: No further questions.

Mr. Williams: That is all.

The Court: Gentlemen, may the witness be finally excused?

(Witness excused)

Mr. Taft: Call Mr. Lee, Your Honor.

Whereupon,

Robert D. Lee

witness called for examination by counsel for Defendant, having first been duly sworn, was examined and testified as follows:

320 Direct Examination

By Mr. Taft:

Q. Would you state your name and address, please, Mr. Lee? A. Robert D. Lee. 3124 Oxford Lane, Las Vegas, Nevada.

Q. Would you state your occupation, Mr. Lee? A. Special agent, Federal Bureau of Investigation.

Q. How long have you been so employed? A. 18 and a half years.

Q. When was it that you were first assigned to the Las Vegas office? A. December 1961, sir.

Q. And have you been there continuously since that time? A. Yes, sir.

Q. Mr. Lee, did there come a time when you were responsible for the installation of a listening device in the Fremont Hotel.

Mr. Bittman: Your Honor, I am going to object to the question.

The Court: You can rephrase that. It does call for a conclusion.

By Mr. Taft:

Q. Mr. Lee, did you or did anybody under your direction and control place a listening device in the Fremont Hotel?

Mr. Bittman: Your Honor, I'd like to approach the bench, please.

321 The Court: All right.

(At the Bench:)

Mr. Bittman: Your Honor, the Government is going to strenuously object to the eliciting of any testimony with respect to placing of these devices in the Fremont Hotel or in Florida, principally on two grounds, number one: is that how the device was placed and by whom is completely irrelevant to the issues at this hearing and secondly, and this is the reason why I have asked for this hearing at the bench rather than open court I believe there is a conflict of interests involved here, Mr. Williams personally and his law firm represents Edward Levinson and approximately a four million dollars law suit against the F. B. I. agents in Nevada. There have been depositions taken out there certain of these agents have asserted executive privilege out there and I believe Mr. Williams is attempting to obtain indirectly by this hearing what he cannot obtain directly as result of that civil suit and because of these two grounds I most strenuously urge that this line of inquiry be stopped.

Mr. Williams: Your Honor, I would like to answer that since I regard it as a personal attack on me that I have of conflict of interests here—I am very sensitive to conflicts of interest—and I don't need from counsel a
322 lecture on legal ethics or on conflicts of interest.

I don't need one at all from him. I will tell the Court that there is no conflict of interest here that Mr. Levinson is fully advised with respect to what we are doing in this motion. Mr. Baker is fully advised. He is sitting in the courtroom. We asked for Mr. Levinson's consent to get those conversations which were picked up in his office in the Fremont Hotel and I have already told Mr. Bittmann, who knows this that we have his consent. In fact, I told it to the Court two days ago. So, in

the second place, Your Honor, it is true that we have a law suit pending in Nevada; and it is true that the law suit is directed against private parties for money damages for this very conduct which is under scrutiny here now. And it is also true that in that hearing we are entitled to and can get and will get all of these conversations I suppose at sometime when we get to the conduct of that litigation. So, it is absurd for Mr. Bittman to say I am trying to do here what I can't do there. Obviously, it doesn't take any perception to see that the conversations which were picked up out there in violation of the felony statutes of the State of Nevada and in violation of rights of privacy of Levinson become germane to that suit.

So that if we were looking for them we would have taken them out there and brought them here if we were conducting that investigation.

323 The Court: Mr. Williams, it seems to me that what we are dealing with here on this motion is the issue of causality, the issue of whether or not these bugged conversations had anything to do with the indictment. The details of how the microphone was placed or what microphone or what type of microphone was used, or who put it there, seems to be outside the purview of what is before me. I am trying to dispose of this matter on its essentials as readily as I can. On that basis, I will ask you gentlemen to come to the brass tacks of the issue. I am not concerned about, in view of the government's admonition that these conversations were unlawfully taken,—

Mr. Bittman: That is correct, Your Honor. We have made that admission. I again make that admission.

The Court: I am not going to go into the details of who committed the violation of law.

Mr. Williams: Your Honor, the admission that was made yesterday was made with respect to the Carlton.

The Court: He makes it with respect—

Mr. Williams: Do you make it with respect to the Fremont?

Mr. Bittman: In chambers I said for purposes of this entire hearing in open court the Government will
 324 concede with respect to Black, Sigelbaum and Levinson that all of the conversations monitored in those locations were in violation of Baker's 4th Amendment rights to privacy. I don't think I can be any more explicit.

Mr. Taft: Your Honor, can I say considering the fact that I asked the question that the relevance of it is to find out where the device was, where it was placed in the room, what it could be expected to be picking up, whether or not it was moved because we had information that it was, or was about to be moved; whether or not it appeared in any other place in the Fremont Hotel; and whether there was any other device in the Fremont Hotel. I think that this is directly relevant to finding that information. We had testimony from Mr. Ridenhour that he did not know how big the office was or what the range of the device was. I believe the device was in the phone so it would have been sure to pick up any telephone conversation on Mr. Levinson's end and I think this is relevant to the—

The Court: In view of the government's admission, sir, I am just going to permit questions going to what was picked up. The extent of the knowledge of this witness.

Mr. Taft: May I ask whether or not there was any other device in the Fremont Hotel outside of Mr. Levinson's office?

325 The Court: Only if it had some relevance to Baker's conversations.

Mr. Williams: Your Honor, may I say—

The Court: That is all we are concerned with here.

Mr. Williams: One last thing and I will be still.

The Court: Yes, certainly.

Mr. Williams: I am concerned about one thing. I don't know whether Mr. Bittman just shooting from the hip

without forethought has suggested that I have a conflict of interest or whether this is the position of the government.

The Court: Mr. Williams, that is really not before me.

Mr. Williams: Well, it is to this extent, Your Honor. I have had many conversations with the Attorney General regarding these matters. And it has never been suggested over two years that I had a conflict of interest. If the Government is resisting turning over this material because I have a conflict of interest then I think it becomes very germane here.

The Court: Well, I think you have to deal with the court in questions of admissibility. I don't think that argument goes to admissibility. The ruling of this court is based on what the court considers the essential issues and I am trying to narrow the inquiry to those
326 essential issues. I am not making any ruling on any basis of conflict. I don't think that is before me.

Mr. Williams: Yes, sir.

The Court: All right, sir.

(In open Court:)

The Court: You may proceed, Mr. Taft.

Mr. Taft: Your Honor, so the record is clear, do I understand that my last question was objected to and sustained?

The Court: Yes, sir.

Mr. Taft: And I may not inquire into the placing of other devices in the Fremont Hotel?

The Court: Yes, sir.

Mr. Taft: May I—

The Court: The ruling of the Court with reference to other devices, Mr. Taft, was that you may inquire about other devices, if those other devices intercepted any conversation in which the defendant, Mr. Baker, was a participant, but only to that extent.

Mr. Taft: Could I just state until I know where they are it is difficult to make that judgment.

The Court: The Court will ask the question, Mr. Taft. Mr. Lee, were any other listening devices placed in the Fremont Hotel than the one in Mr. Levinson's executive office, which additional listening devices intercepted
327 any conversations in which Mr. Baker was a participant?

The Witness: To my knowledge, Your Honor, none.

The Court: All right. Now, you have an answer to that question.

By Mr. Taft:

Q. Mr. Lee, did there come a time when you monitored the devices at the Fremont Hotel which was in Mr. Ed Levinson's office? A. Yes, sir.

Q. Would you state when that took place? A. To the best of my recollection on November 1, 1962.

Q. How many times, Mr. Lee, did you in fact monitor the Fremont device during the period that it was in operation? A. I do not recall. It would have been very few occasions.

Q. Do you recall how long you were on duty monitoring that device on November 1, 1962? A. A matter of a few minutes, sir.

Q. And in that few minutes, you happened to overhear a conversation in which Mr. Baker was a participant, is that correct? A. I do not know if Mr. Baker was a participant.

Q. In any case—May I have Number 3—You were the monitor, were you not, that entered the information
328 in the log, which appears on the first paragraph of Defendant's No. 3, is that correct? A. Yes, sir.

Q. Mr. Lee, what were your instructions, if any, that you received with respect to the manner in which you would conduct the monitoring? A. I received none, sir.

Q. Did you receive any instructions or did you receive

any information relevant to monitoring the device from Mr. Shed? A. Yes, sir.

Q. Did he indicate to you what the areas of interest were in monitoring this particular device? A. To an extent, sir.

Q. Would you state exactly what that extent is? A. He said that he was interested in the associates, the contacts, the illegal skimming of funds, hidden ownership possibilities at the Fremont Hotel, and in particular those contacts, associates of Mr. Levinson.

Q. Did he give you any instructions whatsoever specifically with respect to Mr. Baker? A. No, sir.

Q. Did he mention Mr. Baker's name in any way? A. At one time, I believe he did, sir.

329 Q. Would you state what he told you at that time? A. —Mr. Bittman: I'd like to find out when first, Your Honor. A preliminary question.

The Court: Yes.

By Mr. Taft:

Q. Would you state when? A. I can't recall. I believe it might have been in the early part of December 1962.

Q. Would you state what he told you on that occasion? Mr. Bittman: I am going to object to the irrelevance, Your Honor.

This special agent testified he overheard one conversation, November 11, 1962, which might have been Baker and now the question that is before the witness is what conversation did you have with the case agent about Baker some months or month and a half later and I don't think that is relevant, Your Honor, and I object.

The Court: Overruled. It goes to causality, or it may go to causality; and that is what I am inquiring into. Do you understand the question, Mr. Lee?

The Court: All right.

The Witness: He mentioned to me that in a conversation with Mr. Levinson, Mr. Baker had been identified by
330 Levinson as a friend or associate of his.

By Mr. Taft:

Q. Did he make that comment to you with respect to the notation which you had taken down on November 1st, 1962? A. I don't recall, sir.

Q. Now, you stated, I believe, Mr. Lee, that one of the—that you were told that the type of information they were interested in was a skimming operation or anything of that sort. Would it be fair to state that this is an interest in funds which may have been stolen from the corporation and not reported on its tax return and then used by these individuals to their own ends?

Mr. Bittman: Your Honor, I object to that. That is not a question; it is a statement. If he wants to ask the witness what he believes skimmed funds are it is proper but for Mr. Taft to define it and ask the witness if he agrees I think that is improper.

The Court: If he can understand the question—I don't know whether he can or not. If he knows what skimming means, he can define it.

By Mr. Taft:

Q. Well, are funds skimming funds which are not
331 reported on the corporate books? A. —Mr. Bittman:
I will object to relevancy in any event, Your Honor.

Mr. Taft: Your Honor, if he was given instructions, I believe I can examine him with respect to these particular instructions.

The Court: What he understands by the term. skimming, the court will permit that question.

The Witness: Skimming is as I understood it—were those funds which were not included in any winning reports which might have been made to the State of Nevada.

By Mr. Taft:

Q. Were you also concerned with where this and what usage were made of these funds? A. I have no positive knowledge in respect to that. This was the responsibility of the case agent, and the interest of the case agent.

Q. But in noting down the information you would have noted down any such information, is that correct? A. I would have, yes, sir.

Q. Now, Mr. Lee, was this considered within the terms of the Bureau intelligence information? A. Yes, sir.

Q. Was this a part of the criminal intelligence program as it has been used by Mr. Ridenhour, Mr. Dunfee?

Mr. Bittman: I object to what other witnesses characterized this and I believe again it is irrelevant and
332 immaterial.

The Court: I sustain that objection.

Mr. Taft: Your Honor, I think how they viewed and what uses they believed they were making of this particular information is terribly relevant in following out the causal connection in following what was done with the information.

The Court: Not what Mr. Ridenhour and Mr. Dunfee had to do with it. You can ask this witness what he knew about it.

By Mr. Taft:

Q. Mr. Lee, was this a part of the criminal intelligence program as you understood it?

Mr. Bittman: I object. The same question.

The Court: I will permit that.

The Witness: Would you restate the question, please?

By Mr. Taft:

Q. Was this information which you received over the device intelligence information which was being received as part of the criminal intelligence program? A. I believe so, sir.

Q. Now, Mr. Lee, is—you have been trained, have you not, as an investigator for the Federal Bureau of Investigation? A. Yes, sir.

333 Q. And you're fully aware of the investigative techniques collection of evidence, and so forth, is that not right? A. I am aware of investigative techniques, yes, sir.

Q. Mr. Lee, is intelligence information received over these devices different from evidentiary information?

Mr. Bittman: I am going to object on the grounds of relevancy.

The Court: Sustained.

By Mr. Taft:

Q. Mr. Lee, do you know what was done with the tape of the conversation which you made notes on, on November 1, which is reported on Defendant's Exhibit No. 3? A. I don't recall that this was taped, sir.

Q. Would there be any way to know from the log itself whether it was or was not? A. No, sir.

Q. Taped? A. I have no knowledge of this particular conversation being taped.

Q. It could have been, however, taped. It was your custom from time to time to tape conversations upon which you made notes, is that not right? A. Yes, sir.

Q. And if you made a tape on this occasion, what
334 would have happened to that tape? A. At the end of the day the tape would have been removed from the machine, and furnished to the case agent.

Q. And do you know whether or not the tape would itself be preserved? A. It would not have been.

Q. At what point would it have been erased? A. At a point when it—excuse me. At a point when it was to be reused.

Q. And in the normal course were these reused over and over again? A. Yes, sir.

Q. Mr. Lee, during your training as an investigator, are you informed or instructed that tapes which are ob-

tained of conversations over a listening device which is inserted in a room in violation of the 4th Amendment rights of the occupants of that room, that such a tape may not be introduced into evidence against those persons.

Mr. Bittman: Your Honor, I object. This is a speech and not a question.

The Court: Sustained. You don't need to characterize it, Mr. Bittman. All you need to do is make an objection.

By Mr. Taft:

Q. Mr. Lee, did you at any time inform any attorneys for the Department of Justice of the United States Attorney about the conduct of this surveillance during the time in which it was being conducted?

Mr. Bittman: If this particular question does not relate to this—

The Court: Do you object?

Mr. Bittman: Yes, sir.

The Court: Sustained.

Mr. Taft: I will refer, Your Honor, specifically to whether or not any attorneys were informed of the fact that the Fremont bug was being operated on November 1 of 1962.

Mr. Bittman: Object to the question. Object to the form of the question, if nothing else.

The Court: Mr. Taft, your question is whether this witness informed agents of the Department of Justice, attorneys of the Department of Justice, that this bug was in operation on the first of November 1962?

Mr. Taft: Yes, sir.

The Court: You object to it?

Mr. Bittman: Yes, sir.

The Court: Sustained.

By Mr. Taft:

Q. When was the first time that you informed any attorneys of the Department of Justice that you had overheard this particular conversation which is reflected in the first part of defendant's exhibit No. 3?

Mr. Bittman: Object to the form of the question. When was the first time, assuming a fact not in evidence.

Mr. Taft: He has told right here in court—

The Court: Sustain the objection.

By Mr. Taft:

Q. Was there a time when you did in fact inform an attorney of the Department of Justice that you had monitored this particular conversation on November 1, 1962, which is reported in the first paragraph of Defendant's Exhibit No. 3?

The Court: Mr. Taft, I think all this line of inquiry is immaterial to the causality issue. All that is before the Court on the motion to suppress.

Mr. Taft: I think relevant to the whole inquiry is when the Department of Justice first became aware that this information had been obtained.

The Court: The Court has ruled.

Mr. Taft: And what uses they made of it.

The Court: The Court has ruled for the purpose of the motion.

By Mr. Taft:

Q. I direct your attention, Mr. Lee, to the first paragraph, once more, of the Defendant's Exhibit No. 3,
337 and ask you if you know who the individual is who is referred to there as "Cliff." A. No, sir.

Q. Do you know or do you have any surmise as to who that individual could have been? A. I have no knowledge, sir.

Q. Could it in fact have been Mr. Clifford Jones?

Mr. Bittman: I object, Your Honor.

The Court: Sustained. He says he doesn't know who it is.

By Mr. Taft:

Q. Do you know, Mr. Lee, who wrote in the typed information here which states, conversation in which Robert G. Baker is a participant? A. No, sir.

Q. Have you examined or read the original log? A. Yes, sir.

Q. Is that information in the original log? A. No, sir.

Mr. Taft: Your Honor, I would like to have produced the particular pages which are referred to. The witnesses have stated a number of times that there is information in there which is not reported on here. 338 For instance, where those particular things were sent. The time of day, the indication of the monitor.

The Court: Mr. Taft, the Court has previously advised counsel that the Court is checking the logs against what has been furnished to counsel. If the Court finds that anything is contained in the logs which has not been furnished to you which is relevant to conversations concerning Mr. Baker in which he was a participant, the Court will give you that information.

Mr. Taft: I take it then I cannot have that for cross examination of this witness?

The Court: No, sir. That is not available to you at this time.

By Mr. Taft:

Q. Mr. Lee, when was the device in the Fremont Hotel removed, if you know, or disconnected? A. I don't know the exact date.

Q. Would you give your best approximation, if you have one? A. Approximately April 27, or 28.

Q. Of 1963? A. Of 1963.

Q. To your knowledge, was any other device placed 339 in the Fremont Hotel either before or after that device? A. To my knowledge, no, sir.

Q. Mr. Lee, I would ask you whether or not if you know there was a device placed in the Thunderbird Hotel in the executive offices thereof in Las Vegas, Nevada, between—any time between 1961 and the present?

Mr. Bittman: I object to the question.

The Court: The issue is conversations in which Mr. Baker was a participant. The Court will limit questioning to that.

Mr. Taft: May I just state that?—

The Court: Mr. Taft, the Court has ruled on that point. You may preface your question with the limitation stated by the Court. Then, you may ask the question.

By Mr. Taft:

Q. Was there ever an occasion when you overheard conversations?

The Court: Conversations in which Mr. Baker was a participant. That is the issue at this stage of the game.

By Mr. Taft:

Q. Was there ever an occasion when you overheard conversations in which Mr. Baker was a participant
340 from a device placed in the Thunderbird Hotel? A.
No, sir.

Q. Was there ever an occasion, Mr. Lee, when you overheard a conversation in which Mr. Baker was a participant from a device placed in Mr. Riddle's office in the Dunes Hotel?

Mr. Bittman: I think we can save a lot of time if he asks a question in any place in the world—

The Court: Mr. Bittman, I am sure Mr. Taft is competent to ask the question.

Mr. Bittman: Just trying to save time, Your Honor.

The Court: Gentlemen, when the Court previously said about colloquys between counsel relates to those soto voce and those in open court.

Mr. Taft: Is there a question pending?

The Court: I am not sure, Mr. Taft. If there is I will ask you to restate it. It seems to have been quite a while ago.

By Mr. Taft:

Q. Mr. Lee, was there ever an occasion when you overheard a conversation in which Mr. Baker was a participant coming from a device placed in the office of
341 Mr. Riddle in the Dunes Hotel? A. Not to the best of my knowledge, no, sir.

Q. Was there ever an occasion, Mr. Lee, in which you overheard a conversation in which Mr. Baker was a participant coming from any wire tap on the private phone of Edward Levinson? A. To the best of my knowledge, no, sir.

Mr. Taft: In each case, Your Honor, I would have based my remarks in asking whether or not such a device or tap existed—

The Court: I understand. Mr. Bittman?

Mr. Bittman: Very briefly, Your Honor.

Cross Examination

By Mr. Bittman:

Q. To the best of your knowledge—strike that. With respect to the conversation which you did monitor which appears on page 1 of Defendant's Exhibit No. 3, dated November 1, 1962, do you have any specific knowledge whether or not Bobby Baker, the defendant, in this case, was a participant in that conversation? A. No, sir.

Q. To the best of your knowledge, have you ever overheard by monitor or otherwise any other conversation in which Bobby Baker was a participant with anyone
342 else at any time or at any place? A. To the best of my knowledge, no, sir.

Q. You have examined the Fremont logs, have you not, Mr. Lee? A. Yes, sir.

Q. It was at my request? A. Yes, sir.

Q. And, how many times have you examined them? A. Twice, sir.

Q. With respect to conversations which you monitored does it appear from your review and your independent recollection that Baker appeared or was a participant at any other conversation? A. No, sir.

Q. Have you also reviewed the entire logs with respect to even those conversations which you did not monitor at my request? A. Yes, sir.

Q. Does that review indicate whether or not there was even a remote possibility that Baker was present or participated in any other conversation? A. To the best of my knowledge there was no other possibility.

Mr. Bittman: No further questions.

343 The Court: Mr. Taft?

Mr. Taft: Your Honor, I am sorry; just one point I overlooked.

Redirect Examination

By Mr. Taft:

Q. Mr. Lec, was the device in the Fremont Hotel noted by the symbol, L. V. 90-C?

Mr. Bittman: This is beyond the scope of cross. I object; now we are getting into an entirely new area.

The Court: I will sustain that.

Mr. Taft: No further questions.

The Court: Gentlemen, may this witness be finally excused?

Mr. Taft?

Mr. Taft: Yes, Your Honor.

The Court: You may be excused.

(Witness excused.)

Mr. Williams: I would like to renew the motion I made yesterday at the conclusion of the final witness, Mr. Dunfee, for the Fremont logs in the light of the question put by Mr. Bittman, whether or not the witness had reviewed all the logs made of conversations in Mr. Levinson's office to determine if there was any conversation of Mr. Baker.

I think, Your Honor, that those questions make the logs available to us under the decided cases. I would
344 simply make the point again for the record, Your Honor. I understand the ruling.

The Court: You may furnish the Court with a list of the decided cases which sustain your proposition.

Mr. Williams: Yes, sir. We would like Mr. Doerner. Whereupon,

Fred W. Doerner

witness called for examination by counsel for defendant, having been first duly sworn, was examined and testified as follows:

Mr. Williams: Your Honor, I would like to hand you first a list of the decided cases on the question on which you just asked for a memo on. I will hand one to Mr. Bittman also.

Direct Examination

By Mr. Williams:

Q. Mr. Doerner, would you state your full name, please?

A. Fred W. Doerner, Jr.

Q. Where do you live, Mr. Doerner? A. Miami, Florida.

Q. How long have you lived there? A. February, 1962.

Q. Where did you live prior to that time? A. Indianapolis, Indiana.

345 Q. How have you been employed during the period that you just named? A. As a special agent, Federal Bureau of Investigation.

Q. How long have you been so employed, sir? A. 24 years.

Q. Directing your attention, Mr. Doerner, to the year, 1963. Did there come a time when you began an investigation of Benjamin Sigelbaum? A. Yes, sir.

346 Q. Can you tell us the time? A. The investigation actually began in December of 1962 of Mr. Sigelbaum.

Q. Were you the agent in charge of that investigation in the Miami office? A. Yes, sir.

Q. Now, did there come a time when as agent in charge of the investigation of Mr. Sigelbaum you caused to be placed or were made aware that such a device was placed, an electronic monitoring device in Mr. Sigelbaum's office or in a place contiguous to it? A. Yes, sir.

Q. Can you tell the Court, please, when that was? A. January 21, 1963.

Q. January of 1963? A. Yes, sir.

Q. Was that device a device which was capable of transmitting to some point where monitors listened all the conversations that took place in Mr. Sigelbaum's office? A. Yes, sir.

Q. Was it a device which picked up telephone conversations? A. It was a device which picked up sounds
347 originating in the office. It did not pick up two sides of a telephone conversation.

Q. It picked up telephone conversations of one side, namely, the side emanating from Mr. Sigelbaum's office, is that correct? A. That is correct, yes, sir.

Q. Now at what point were the conversations in Mr. Sigelbaum's office monitored? At what geographical points? A. In the Miami office of the F. B. I.

Q. And where is the Miami office of the F. B. I. in relationship to the office of Sigelbaum? A. It is a distance of roughly two to three miles. The Miami office of the F. B. I. is located at 3801 Biscayne Boulevard and Mr. Sigelbaum's office is in the Dupont Plaza Center, at 300 Biscayne Boulevard Way.

Q. Were those conversations transmitted over leased telephone lines? A. Actually I have no personal knowledge of the technical aspects of how they were transmitted.

Q. Your knowledge is limited simply to the fact that they were being transmitted beginning in January of '63? A. Yes, sir.

Q. Now, for how long a period of time were the
348 conversations in Mr. Sigelbaum's office monitored
electronically? A. In July of 1965 but there were
two breaks in that overall period.

Q. All right. Will you tell us, if you can, Mr. Doerner
beginning in January of 1963 and ending in July of 1965,
what specific periods the electronic monitoring was in?

A. It was in from January 21 of 1963 until July 12, 1965,
with the exception of two periods and those two periods
were from September of 1963, to November 18, of 1963
and from December 5 of 1963 until December 27 of 1963.

Q. Now, during those two periods of time, namely, from
September '63 to 18 November '63, a period of two months
as I compute and from December 5, '63 to December 27,
'63, was the device removed or was it simply not opera-
tive? A. Well, the first device became inoperative and
subsequently was removed.

Q. It became inoperative on 19 September? A. Yes,
sir.

Q. Was that because of a physical defect in the device?

A. To the best of my knowledge it was some sort of tech-
nical difficulty.

Q. And then in November a new device was placed
349 there, is that correct? A. Yes, sir.

Q. Now is the same thing true with respect to
the period of hiatus beginning December 5, 1963? A. Yes,
sir.

Q. It was a defect in the device? A. This is my un-
derstanding, yes.

Q. It took two weeks to get a new device in and opera-
tive, is that correct? A. Yes, sir.

Q. So that with those two exceptions for a two and a
half year period, there was electronic surveillance by
F. B. I. agents or clerks of Mr. Sigelbaum's office? A. Yes,
sir.

Q. Now, can you tell the Court please how the device
was monitored?

Was it monitored on a 24-hour basis or was it monitored simply during office hours? A. I was not one of the monitoring personnel but it was my understanding that on some periods of time it was monitored for 24 hours and at other periods it was monitored on a daily basis for periods in less than 24 hours.

Q. Was it always monitored to the best of your knowledge and information as the agent in charge during office
350 hours say from eight in the morning to six in the evening? A. Yes, sir.

Q. Now did you, Mr. Doerner, give instructions to the monitors who worked on this case listening to the conversations emanating from Mr. Sigelbaum's office? A. Yes, sir.

Q. And will you tell the Court what instructions you gave at the outset of the installation of this device which I understand was in January of '63? A. Yes, sir.

Q. Excuse me before you answer that, this was a time several months after you began an investigation of Mr. Sigelbaum, right? A. It was a matter of approximately one month.

Q. One month. I see. A. As to the instructions, I told Mr. Doherty, one of the monitoring personnel that this device was an investigative aid in the investigation of Mr. Sigelbaum. Insofar as assisting in determining his connection with organized crime. And that as such I was interested in Mr. Sigelbaum's associates, in criminal activities which might be indicated.

Q. Did you know at the time that you gave instructions to Mr. Doherty, I believe you said? A. Yes,
351-60 sir.

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361 By Mr. Williams:

Q. At the time that the microphone surveillance was installed on Mr. Sigelbaum, which I understand was in January of 1963, specifically, January 21, did you know that

Mr. Sigelbaum was a business associate of the defendant in this case, Robert Baker? A. I was aware of the identity of Mr. Baker. I can't recall with certainty at this point whether I knew of a connection between Mr. Sigelbaum and Mr. Baker at that time.

Q. You say you were aware of his identity, you knew who he was? A. Yes, sir.

Q. Is that all you mean by that? A. Yes, sir.

Q. You don't know whether you knew that Mr. Sigelbaum and Mr. Baker were in business in the Serv-U Vending Company? A. At that particular time, I am just sorry, I am unable to recall.

Q. Did you know that Mr. Sigelbaum was an owner of the Serv-U Vending Company? A. That was a fact which developed during the investigation, yes, sir.

Q. Did there come a time when you realized or came to know that Mr. Baker was an owner of Serv-U Vending Company along with Mr. Sigelbaum? A. Yes, sir.

Q. That they were in business together? A. Yes, sir.

Q. Now, was that during the microphone surveillance of Mr. Sigelbaum or before it? A. It was early in the investigation. I regret that I am unable to pinpoint the exact time.

Q. Now, when you gave instructions to the monitors of the microphone surveillance on Mr. Sigelbaum, did you allude to Mr. Baker? A. No, not at all.

Q. You never discussed Mr. Baker with them? A. When I gave the instructions to the monitoring agents, they were solely concerning Mr. Sigelbaum.

363 Q. Were those monitoring agents Mr. Dougherty, Mr. Bonner, Mr. Falls, and Mr. Moehle? A. Yes, sir, I gave the instructions to Mr. Dougherty and asked him to relay them to the other monitors.

Q. Mr. Dougherty was the chief monitor, was he? A. Not necessarily, no, sir. I mean, there is no such title as chief monitor.

Q. He was the one, at least, with whom you dealt? A. Yes, sir.

Q. How many other monitors were there on this surveillance? A. Well, there were three others.

Q. Three others? A. The ones you named, yes, sir.

Q. And they were all monitors on this surveillance? A. They were all monitors who were—yes, sir, as it pertains to Mr. Baker.

Q. Were there other monitors than the ones that I have named on this surveillance? A. There may have been.

Q. Do you recall whether there were specifically? A. There were other clerical personnel, yes, sir, who
364 were—

Q. Monitoring? A. Yes.

Q. How many others? A. I can recall one, a Mr. Thickston.

Q. Mr. Thickston? A. Yes, sir.

Q. Is that the only one you can recall at this point? A. Yes, sir.

Q. Now, were these clerical employees whom I have mentioned spelling each other during the period of the surveillance and performing on different shifts while Mr. Sigelbaum's office was under surveillance? Is that the way they worked? A. To some extent, and to some extent there may have been more than one on at the same time, more than one on duty at the same time.

Q. In other words, there would be as many as two monitors on the one surveillance of Mr. Sigelbaum? A. Yes, sir.

Q. And what duties would the second monitor perform? A. Well, they would both have the identical duties.

Q. What would those be, sir? A. To monitor
365 the listening device.

Q. And would you tell, please, how that was done? A. Well, now, I was not a monitor, but it is my understanding that they would listen; and when any intelligence

came over, they would make a tape recording of it and then reduce that tape recording to a written log.

Q. And was that done, to your knowledge, with respect to all conversations in Mr. Sigelbaum's office of a business nature? A. Yes, sir.

Q. Were there any kinds of conversations which they were not supposed to record? A. Unless information was trivial or purely insignificant, such as a car force coming into the room or something like that.

Q. They recorded it? A. Yes, sir.

Q. And then the record was transcribed into written form? A. Yes, sir.

Q. And was that turned over to you? A. Yes, sir.

366 Q. And how frequently would that be turned over to you? A. On a daily basis.

Q. On a daily basis? A. Yes.

Q. And you would read that material? A. That's true.

Q. Was that turned over to you in raw handwritten form or was it turned over to you in typed form? A. When they transcribed it from the tape, they typed it. It was in typed form.

Q. Typed form? A. Yes, sir.

Q. And at the end of each day or the day after you received a sheaf of papers which were the conversations that had taken place in Mr. Sigelbaum's office for the day before? A. Yes, sir.

Q. Now, what would you do with those conversations? A. Well, I reviewed them for pertinent information concerning Mr. Sigelbaum.

Q. And did you then make any form of memorandum with respect to those conversations? A. Yes, 367 in some cases I did, yes, sir.

Q. Did you do that frequently? A. Well, frequently during the course of the investigation, yes, sir.

Q. When you made the memorandum, you would recite in narrative form the facts that had been learned as the

result of the surveillance, is that right? A. In some cases in narrative form; in some cases in verbatim form.

Q. And would you disclose in the memorandum that you wrote up the fact that the information had been gleaned from an electronic surveillance? A. Yes, sir.

Q. And how would you say that? A. Well, by various means. It might be by referring to it as the source or the informant or perhaps by a numerical designation.

Q. But you wouldn't say in a memorandum that you prepared: "The following information was learned by the microphone surveillance of Benjamin Sigelbaum's office," would you? A. I would not use that phraseology, no.

Q. You would say the informant or designate the
368 number of the device or say a source? A. Yes, sir.

Q. Was there a reason for that? A. Well, it was just a matter of operating procedure.

Q. This was standard procedure, was it? A. In so far as I was concerned.

Q. Was it standard procedure in so far as the agency is concerned? A. I believe so, yes, sir.

Q. So that when the term an informant or a source reports that could be an electronic listening device? A. It could be, yes, sir, in certain instances.

Q. Now, Mr. Doerner, you said that this device was in for a period, I believe you gave specific dates of about two and a half years, with those two hiatal periods designated when the device was broken? A. Yes, sir.

Q. Now, during that two and a half year period, you read on a daily basis or almost daily basis the transcribed conversations in Sigelbaum's office, right? A. Yes, sir.

Q. And you would with a degree of frequency
369 prepare memoranda from those?

Mr. Bittman: Your Honor, I don't think it is necessary to continuously summarize all the testimony. The last three questions were all summaries of what the agent testified.

The Court: Well, Mr. Williams, let us get on with this matter as well as we can.

Mr. Bittman: May we ask for the last question, Your Honor.

The Court: I am not sure I remember the last question.

By Mr. Williams:

Q. What did you do with the memoranda that you prepared from these devices? A. Disseminated them.

Q. Disseminated the memoranda to what points? A. Well, it would depend, of course, on the particular memoranda, but to FBI headquarters and to interested field offices.

Q. Well, now, did you know, Mr. Doerner, that Mr. Sigelbaum was a business associate of Mr. Black? A. Yes, sir, I knew that fact.

Q. Did you know that Mr. Sigelbaum was a business associate of Mr. Levinson? A. Yes, I did.

Q. Did you know that Mr. Black and Mr. Levinson were under electronic surveillance? A. Yes, I did.

Q. Did you disseminate the information that you obtained and reduced to memorandum form to the case agents in charge of Mr. Black and Mr. Levinson? A. I disseminated it to those particular offices.

Q. To their offices? A. Yes, sir.

Q. Did you know who the agents in charge of the Levinson and Black cases were? A. I was not personally acquainted with them at that time, no, sir.

Q. You have become acquainted with them in the last couple of days, is that right, Mr. Doerner? A. Yes.

Q. Did you know that it was a man named Pennypacker in the case of Black and a man named Shedd in the case of Levinson? A. Yes, sir.

Q. And did you direct your memoranda attention
371 Mr. Shedd or attention Mr. Pennypacker? A. No, sir.

Q. You directed it attention agent in charge of the field office? A. Yes, sir.

Q. Las Vegas and Washington? A. Yes, sir.

Q. Now, in any of the memoranda that you sent to Washington, did you make reference to Mr. Robert Baker? A. Yes, sir.

Q. And did you send this information to the agent in charge of the Washington field office? A. Yes, sir.

Q. Would that also go to, I believe you would call it, bureau headquarters, is that what you call it? A. Yes, sir.

Q. That is the FBI headquarters at the Department of Justice? A. Yes, sir.

Q. So all memoranda would go to headquarters and they would go to pertinent field offices? A. Well, again, insofar as pertinent they would go. When we speak of all memoranda, as they are pertinent, yes, sir, they would
372 go to FBI headquarters and to pertinent field offices.

Q. Now, at any point did you direct that any memoranda relating to Mr. Baker go to any specific field office?

Mr. Bittman: Your Honor, I am going to object unless it is limited to those conversations in which Baker was either a participant or was present.

The Court: Well, with that understanding—

Mr. Williams: I thought that was clear, Your Honor. I don't like to keep restating it on each question.

The Court: All right.

The Witness: I wonder if I could hear the question again.

By Mr. Williams:

Q. I am talking now about the memoranda that you prepared, Mr. Doerner, as the result of reading the logs on a daily basis of the microphone surveillance of Mr. Sigelbaum. Now, as I understand it, you sent your summaries to the various field offices that you felt should receive the information.

Now, at any time, did you send memoranda in which information on Mr. Baker was contained to any specific field offices? A. Yes, sir, I sent out a total of eight communications in which Mr. Baker was mentioned in so far as conversations which he had had with Mr. Sigelbaum.

Q. And can you tell us where those eight communications went? A. Yes, sir. They went, collectively they went to FBI headquarters, they went to Las Vegas, Los Angeles, Newark, New York, the Washington field office, Jacksonville, Kansas City, and Richmond.

Q. Now, do you have any information as to what use was made of that information thereafter? A. Yes, sir, I do have information that no use was made of it in so far as Mr. Baker is concerned.

Q. You do have that information? A. Yes, sir.

Q. Do you have information with respect to what use was made of the other information contained in your memoranda?

Mr. Bittman: I object. It would be immaterial.

The Court: Sustained.

Mr. Williams: Well, Your Honor, I think the witness is testifying, if I may say this in his presence, as the result of information that he has obtained in the preparation of this motion, and I want to explore that.

The Court: Mr. Williams, we are only interested in the Baker conversations.

Mr. Williams: All right.

By Mr. Williams:

Q. When did you learn then, Mr. Doerner, that no information was made of the information that you sent on Mr. Baker? A. During the course of the investigation.

Q. From whom did you learn that? A. Well, in the first instance, Mr. Williams, I didn't request any investigation; and, secondly, if any office on receiving one of these

summary communications had taken it upon itself to conduct an investigation concerning Mr. Baker, I would have been apprised of that fact; and I was not so apprised in any instance. And, thirdly, in connection with this particular hearing, a request was made to those field offices to make certain that they had not conducted any investigation of Mr. Baker on any of those Miami summaries.

Affidavits were executed by the agents in charge of those offices which I recounted a moment ago. I
375 have been given an opportunity to review those affidavits; and in each instance, the answer was that no investigation of Mr. Baker was conducted based on our Miami summaries.

Q. Are you testifying, Mr. Doerner, from your review of the affidavits that were prepared by the heads of the various field offices when you give us this answer? A. I am testifying primarily from my independent recollection that I didn't request any investigation, and I didn't receive any investigation that was conducted initiated by a field office.

Q. Would it be the practice of the field office to advise you with respect to each subject mentioned in your memorandum if it was conducting an investigation on a tax matter, for example? A. Well, of course, we don't handle tax matters; but in the normal course of business, if any office which received one of my summaries had initiated an investigation of Mr. Baker based thereon, I would have been apprised of the nature of that investigation.

Q. Well, would you have been apprised, Mr. Doerner, if the field office had initiated an investigation not based on your memorandum but based upon something other
376 than your memorandum? A. If I understand the question correctly, in other words, if an office initiated an investigation of Mr. Baker completely unrelated to anything that occurred in Miami?

Q. Yes. A. Not necessarily.

Q. Would they advise you, then, if they used any of the information in your memorandum? A. Yes, sir.

Q. They would? A. Yes, sir.

Q. In other words, each time that—

Mr. Bittman: I object to Mr. Williams again summarizing, Your Honor, unless he wants to take the witness stand himself.

The Court: Well, Mr. Bittman, I am going to let Mr. Williams ask the question.

By Mr. Williams:

Q. Is it the fact, Mr. Doerner, that each time that a field office uses information in a memorandum sent by another field office for any purpose that it advises the originating field office? A. I can answer that best, I believe, Mr.

377 Williams, by stating that if any office had utilized information concerning Mr. Baker in one of my summary communications, that in the normal course of business I would have been advised of that fact, yes, sir.

Q. And that would be true with respect to whenever it was used?

Mr. Bittman: I object. It is repetitious, Your Honor.

Mr. Williams: '63, '64, '65.

The Court: I am going to permit the question.

The Witness: Yes, sir, I think in the normal course of business I would have been so advised.

By Mr. Williams:

Q. But you were not advised in '63, '64, or '65 that any of your memoranda were used? A. No, sir, I was not so advised.

Q. Is that true, Mr. Doerner, with respect to other persons mentioned in your memoranda, were you advised that the information was used by the field offices?

Mr. Bittman: Object as not being material.

The Court: Objection sustained. We are only concerned with Mr. Baker's conversations, Mr. Williams.

378 By Mr. Williams:

Q. Now, Mr. Doerner, were you aware of the fact that while the electronic surveillance was being conducted of Mr. Sigelbaum that a conversation was picked up between Mr. Sigelbaum and Mr. Baker in 1964, December? A. Yes, sir, there was a conversation in December of 1964.

Q. Were you aware that at that time there was a Grand Jury sitting in the District of Columbia investigating Mr. Baker's activities? A. I have no personal recollection of that. I may have known it at the time.

Q. Well, let me show you Defendant's No. 2 and direct your attention to the conversation of 12/30/64.

The Court: What page?

Mr. Williams: Page 13, Your Honor.

By Mr. Williams:

Q. And I ask you if there is reference to a Grand Jury investigation and the possibility of Mr. Sigelbaum being subpoenaed. A. Yes, sir, this serves to refresh my memory, and I do now recall that he made a joking, that Mr. Sigelbaum made a joking reference to a Grand Jury.

379 Q. Did you know at that time that it was Mr. Baker's Grand Jury that he was referring to? A. That was the inference I drew, yes, sir.

Q. Now, did you find out or did you undertake to ascertain how long that Grand Jury had been sitting at that time? A. No, sir, I didn't because I had no interest in Mr. Baker.

Q. Now, Mr. Doerner, in the logs that you reviewed in the regular course of business, were there occasions when the party to whom Mr. Sigelbaum was talking was not identified by the monitor? A. Yes, sir, there were such occasions?

Q. And were those occasions frequent? A. There were various such occasions. I would be hesitant to classify them as either frequent or infrequent.

Q. Was there any way that the monitor could know to whom Mr. Sigelbaum was speaking on the telephone unless he made a call asking for that party or address him by his name during the conversation? A. Was there any way the monitor could tell?

Q. Yes. A. Well, now, I was not one of the monitoring personnel.

Q. I understand that. You have told us that. But you were familiar with the way in which they were operating? A. Yes, sir.

Q. Was there any way? A. Yes, sir, I believe so.

Q. What was that, sir? A. Well, I would say, based on a review of these logs which would serve to refresh their independent recollection, that they would be in a position to say that there were no conversations involving Mr. Baker other than those which—

Q. I don't think you understand my question, Mr. Doerner. I am asking you about a time when the monitors were listening to the conversations in Mr. Sigelbaum's office. Now if Mr. Sigelbaum was talking to another party on the phone, how would the monitor know to whom he was talking?

Mr. Bittman: I object to the question. He wasn't a monitor, Your Honor. This is speculation, conjecture.

The Court: If the witness knows.

Mr. Bittman: The monitors are here.

381 The Court: I will let him answer the question if he knows.

The Witness: Well, since I wasn't a monitor, I don't feel I am in a position to speculate.

By Mr. Williams:

Q. You can't help us any? A. No, sir.

Q. Did you have a device there which recorded the numbers which were dialed by Mr. Sigelbaum? A. Not to my knowledge.

Q. Do you know what I am referring to? A. Yes, sir.

Q. What do you call those devices? A. At the moment, I can't think of the name. To my knowledge, no, sir.

Q. Do you call this a pen register? Do you know what a pen register is? A. Well, I know that there are devices which perform the function to which you alluded; and to my knowledge, there was none in this case.

Q. There was none in this case to show what number Mr. Sigelbaum dialed and to whom he talked, is that
382 right? A. To my knowledge, yes, sir.

Q. Now, do you know as a result of reading the logs whether Mr. Sigelbaum made his own calls or had his calls made by a secretary? A. As a result of reading the logs, I would say he made his own calls.

Q. Made his own calls from his office, is that correct? A. Yes.

Q. Now, with respect to incoming as distinguished from outgoing calls, Mr. Doerner, was there any way to your knowledge as a result of your experience as agent in charge of this case in which the monitors could ascertain to whom Mr. Sigelbaum was talking?

Mr. Bittman: Your Honor, I am going to object again. All the monitors are here. These questions are pertinent for the monitors, and I object.

The Court: If the witness can answer the question, he may.

The Witness: Again, I don't like to speculate on the monitoring procedure. No, I don't know.

By Mr. Williams:

Q. You don't know of any way that they could
383 have learned that? A. I don't know of any way that I can speculate and give a responsive answer to your question.

Q. I don't want you to speculate. I want you to give us your best information on the subject.

The Court: Mr. Williams, I think he has answered. He can't tell.

Mr. Williams: All right.

By Mr. Williams:

Q. Now after 1964, Mr. Doerner, did you find any records of conversations between Mr. Sigelbaum and Mr. Baker?

A. No, sir.

Q. Do you know whether the information, Mr. Doerner, that you sent to the Washington field office, which made reference to Mr. Baker, was collected in a single file? A. I am not in a position to say how Washington field filed it, no, sir.

Q. I will rephrase the question and ask you whether such information that you sent to Washington bureau headquarters containing information on Mr. Baker would be collected in one file.

Mr. Bittman: I object, Your Honor.

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385 Q. Or in the Levinson file? A. Well, again, my communications were in the Sigelbaum file. Now how they were filed in Washington I am not in a position to state.

Q. Do you know who would know that, Mr. Doerner, in headquarters?

Mr. Bittman: I object, Your Honor. It is immaterial.

The Court: I think it is immaterial to our inquiry, Mr. Williams.

Cross Examination

By Mr. Bittman:

Q. You were the agent assigned to the Bennie Sigelbaum investigation, is that correct? A. Yes, sir.

Q. Were you ever assigned to any investigation of Robert G. Baker? A. No, sir.

Q. Did there come a time in the latter part of 1963 when an agent was assigned to an investigation relating to
386 Robert G. Baker? A. In the Miami office, yes, sir.

Q. Now, directing your attention, sir, to all the

conversations which were presented to you in this typed log, these particular conversations that you were shown before and you have examined, is that correct? A. Yes, sir.

Q. Was any of this information that appeared in the log that related to Baker ever disseminated by you to the case agent in charge of Baker in the latter part of 1963 or afterwards? A. No, sir.

Q. Why wasn't it? A. Because it was insignificant information.

Mr. Bittman: No further questions.

Redirect Examination

By Mr. Williams:

Q. Did you make the judgment it was insignificant information? A. Yes, sir.

Q. Did you know what the Baker investigation involved? A. Just generally that it was a conflict of interest investigation.

Q. Well, did you discuss this with the agent 387 in charge of the Baker investigation? A. No, sir.

Q. Did you ever ask him whether it was significant or not? A. No, sir.

Q. Was he aware of the fact that there had been an electronic surveillance on Mr. Sigelbaum? A. If he was, Mr. Williams, he didn't learn it from me.

Q. Did you keep from him the files with respect to the Sigelbaum investigation? A. Did I physically keep from him the files?

Q. Did you secrete from him? A. No, sir, I did not.

Q. Were they accessible to him? A. I presume they would be.

Q. Did he know that Mr. Baker—

Mr. Bittman: Your Honor, I object to this rapid fire questioning. He doesn't let the witness answer, and he has got the next question going. Two or three times he cut the witness off, and I respectfully ask the Court—

The Court: Mr. Bittman, if the Court were
 388 aware of the witness being cut off in his answer, the
 Court would stop counsel so that the witness could
 fully answer.

Mr. Bittman: All right, sir. Thank you.

The Court: Expedition is something the Court would like
 to see in this matter.

By Mr. Williams:

Q. Mr. Doerner, did the agent in charge of the Baker
 investigation in '63 ever discuss with you that Sigelbaum
 and Baker were partners in the Serv-U Vending Company?
 A. No, sir.

Q. And in other businesses? A. No, sir, he did not.

Q. Did you discuss—did you ever apprise him of that
 fact? A. No, sir.

Q. You never discussed—

Mr. Bittman: I object. It is the third time he is asking
 the same question, Your Honor.

The Court: You may ask the question.

Mr. Williams: I think Mr. Bittman anticipated the ques-
 tion I was going to ask, but I didn't ask it.

389 The Court: You ask the question, and I will rule
 on it.

Mr. Williams: Would you read it back to me now,
 please?

(The Reporter read the last question: "You never dis-
 cussed"—)

By Mr. Williams:

Q. What was the name of the agent in charge of the
 Baker investigation there? A. Alex Radcliffe.

Q. Where is he presently located? A. To the best of
 my knowledge he is in Oklahoma City.

Q. Oklahoma City? A. Yes, sir.

Q. And do you know how long or over what period of
 time he was assigned to the Baker investigation in Miami?

No, sir, I don't know. My recollection is he had it for a substantial period of time, but I can't give the exact dates.

Q. When was it that he left the Miami office? A. Just an ordinary routine transfer in so far as I know.

390 Q. I said when? A. When did he leave? I am not certain that I can recall that date with any degree of accuracy. I would say approximately a year ago.

Q. And who was the agent in charge in Miami at that time, Mr. Doerner? A. At what time, Mr. Williams?

Q. 1963. A. In 1963 the office was in charge of Mr. Wesley Grapp.

Q. Mr. Grapp? A. Yes, sir.

Q. And was he also in charge in '64? A. Again, I am not certain as to the date when Mr. Grapp was transferred. It would be my recollection that he was in charge in the early part of 1964.

Q. Did each of you, both Mr. Radcliffe and you, report to Mr. Grapp on your activities? A. On our activities pertaining to this case?

Q. All cases. A. No, sir. I reported to my immediate supervisor, and I presume Mr. Radcliffe reported to his immediate supervisor.

Q. You had different supervisors? A. Yes, sir, we were on different squads.

391 Q. Did the supervisor then report to the agent in charge? A. Where pertinent, yes, sir.

Mr. Williams: Where pertinent. Thank you, sir.

Mr. Bittman: No further questions.

The Court: May the witness be excused, gentlemen?

Mr. Williams: Yes, sir.

The Court: Thank you. You may be excused, Mr. Doerner.

The Witness: Thank you, Your Honor.

(Witness excused.)

Mr. Williams: Mr. Dougherty.

Thereupon,

Terrance Richard Dougherty

was called as a witness for the defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williams:

Q. Would you state your full name, please, sir? A. Terrance Richard Dougherty.

392 Q. Where do you live, Mr. Dougherty? A. In Miami, Florida.

Q. Where in Miami, sir? A. 5601 Northwest First Avenue.

Q. How long have you lived there? A. About four years.

Q. And what is your occupation? A. I am an investigative clerk with the FBI.

Q. How long have you been so employed? A. I have been employed with the Bureau since 1960, sir.

Q. And were you assigned to another office prior to being transferred to Miami? A. No, sir.

Q. When was it that you moved to Miami, sir? A. When I got out of the service in 1959.

Q. I understood you to say you lived in Miami only four years. Was I in error? A. No, sir, I lived at 5601 Northwest First Avenue for about four years.

Q. I see. But you have lived in Miami for a long period of time? A. Yes, sir.

393 Q. How long, sir? A. Approximately twelve years.

Q. Now, directing your attention, Mr. Dougherty, to the year 1963, did there come a time when you were assigned to monitor conversations in the office of Mr. Benjamin Sigelbaum? A. Yes, sir.

Q. Can you fix that in point of time for us? A. In January of '63.

Q. Are you able to help us more specifically with respect to a date? A. I believe the initial date was the 23rd of January, 1963.

Q. How long, Mr. Dougherty, were you assigned to this task? A. Through August of 1964.

Q. So that you were serving as a monitor on the device in Mr. Sigelbaum's office for a period of about eighteen months, is that correct? A. Approximately, yes, sir.

Q. And were you taken off that assignment? A. Yes, sir.

Q. And you had nothing further to do with it in 394 August of '64, is that correct? A. Yes, sir.

Q. But you still continued to work in the Miami office? A. That is right, sir.

Q. Now, when you were serving as a monitor of the device in Mr. Sigelbaum's office from January '63 to August '64, were you in charge of the monitors? A. No, sir.

Q. Well, did you report to Mr. Doerner with respect to your activities in this task? A. No, sir.

Q. To whom did you report? A. To my supervisor.

Q. Who was your supervisor? A. Mr. H. Wayne Swinney.

Q. And was Mr. Swinney an agent or a clerk? A. He was an agent, sir; he was an agent supervisor.

Q. Was he in charge of the monitoring of the device in the Sigelbaum office? A. Yes, sir.

Q. Now, did you receive your instructions, Mr. Dougherty, from Mr. Swinney with respect to how you 395 should perform your duties with respect to this microphone surveillance? A. Yes, sir.

Q. And when did he give you those instructions? A. When I reported to the unit in January of '63.

Q. And what instructions did he give you? A. The instructions were to monitor the conversations and activity that came in, transcribing pertinent conversations, and type the finished log.

Q. Now, how did you actually perform your duties? Did you listen with earphones to what went on in the Sigel-

baum office and simultaneously run a tape recorder? A. Yes, sir. We listened to the activity as it came in on the unit. There were times when we used earphones, but we had a speaker in the unit.

Q. Were you in a room by yourself? A. Yes, sir.

Q. So you were able to keep a speaker on? A. There was a speaker attached to the unit in which the activity came across, yes, sir.

Q. And when a voice came across you pressed and had the voice recorded on tape, is that right? A. Yes.

396 Q. Now, who was it who instructed you with respect to what, to use your term, was pertinent and what was not pertinent? A. Well, sir, the activity that came across that was not pertinent was obviously trivial conversations about the weather, sports, etc. It was obviously trivial.

Q. Is it a fair statement to say that you were instructed to record everything of a business nature conversationwise? A. I am not sure I follow your question, sir.

Q. Well, I will rephrase it. Were you told that you should record every conversation that related to business matters? A. No, sir.

Q. Well, were there certain business transactions that you didn't bother to record? A. Very few.

Q. Well, what was the basis for distinguishing between those you recorded and those you didn't record? A. Well, sir, what I am trying to point out is that we did not know what was pertinent; and when we did not know what was pertinent, of course, we recorded it.

Q. Well, then, you recorded everything, didn't
397 you? A. We recorded, yes, sir, just about everything.

Q. Now, were any instructions given to you in January of '63 or thereafter or was any information given to you in January of '63 or thereafter regarding Robert G. Baker? A. No, sir.

Q. Did you ever hear from any of your superiors anything on the subject of Mr. Baker and what you should do vis-a-vis conversations in which he was a participant?

A. No, sir.

Q. Did there come a time when you heard conversations in which Mr. Baker was a participant? A. There were times upon which Mr. Baker might have been a participant.

Q. Now, directing your attention, Mr. Dougherty, to Defendant's Exhibit No. 3, I call your attention to the conversation dated March 23, 1963. A. Yes, sir.

Q. And in that instance, you were monitoring that conversation, were you not? A. That is correct, sir.

Q. And on that occasion Mr. Sigelbaum called Mr. Baker, didn't he? A. He called a Mr. Bobby Baker.

398 Q. And do you know where he called Mr. Baker in Miami? A. From the nature of the conversation I would say that it was at a hotel, the Sheborne Hotel.

Q. Is that the Shelbourne Hotel? A. It is misspelled here. I guess it is the Shelbourne.

Q. Is there a Shelbourne Hotel in Miami? A. I believe so, sir. I don't know.

Q. Now, at the time that you made your notes on that conversation, did you know who Bobby Baker was? A. No, sir.

Q. Did you make inquiry as to this conversation of anyone? A. No, sir.

Q. Now, when you made up your log and typed up your final transcript of this conversation, to whom did you give it? A. To the supervisor.

Q. And that was Mr. Swinney? A. Mr. Swinney.

Q. Was this true of all the conversations that you
399 heard during the eighteen month period? A. Yes, sir.

Q. On each occasion you turned over your typed transcripts to Mr. Swinney? A. That is correct, sir.

Q. And you would do your typing, would you, on the

next day after you heard it? A. No, sir, in some cases it was done on the same day.

Q. On the same day. Did you make your record on the first instance in handwriting and then type it or were you able to type along? A. No, sir, it was in handwriting.

Q. It was in handwriting. Were those handwritten records preserved, to your knowledge? A. No, sir.

Q. They were not? A. No, sir.

Q. Did you destroy them after you typed up your notes? A. Yes, sir.

Q. You destroyed them on the same day? A. Yes, sir.

Q. So that the only thing preserved in so far as
400 you know are documents typed that you turned over to Mr. Swinney? A. Yes, sir.

Q. Now, on March 27th you heard another call to Mr. Baker, did you not? A. Yes, sir.

Q. And that call was made to Washington? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, when you recorded this particular call, Mr. Dougherty—let me make it a little clearer, if I may.

When you typed up this particular call, did you type it from your handwritten notes or from the recording that was put on tape? A. This was from the tape.

Q. And when you typed from the tape you would at least attempt to type what was said verbatim, would you not? A. Yes, sir.

Q. So that this at least purports to be a verbatim
401 conversation? A. Yes, sir.

Q. Now on the 5th of June you monitored still another call to which Mr. Baker was a party, is that correct? A. He might have been a party; he might have been a participant. Oh, yes, sir, I see what you mean.

Q. Your answer is that he was a party? A. I have no way of knowing, but he was addressed as Bobby Baker. The call was placed by Mr. Sigelbaum to a Mr. Bobby Baker in Washington. The call was returned by a Mr. Baker

or by a Bobby. I assume that this was a return call of Mr. Sigelbaum.

Q. Now on that occasion they discussed the Serv-U Vending Corporation and its business affairs, did they not? A. Yes, sir.

Q. And they discussed a man named or a woman named Ozzie, is that correct? A. I would have no way of knowing whether it was a woman or a man.

Q. Do you know who Ozzie was? A. No, sir.

Q. In other words, there was a conversation
402 emanating from Mr. Sigelbaum, at least, re one Ozzie?

A. Yes, sir.

Q. You didn't know then and you don't know now who Ozzie was, is that right? A. That is correct.

Q. You heard no further reference to Ozzie, whoever he or she might be thereafter when you listened? A. No, sir.

Q. Now, Mr. Dougherty, I call your attention to the very last letter. A. Letter, sir?

Q. Letter behind the June 5 transcription which says (t). What does that mean? A. Terminate.

Q. Terminate. Any time (t) is used, appears, that means the conversation terminated? A. When I type it up it means terminate.

Q. Are you able to tell us when that conversation took place in point of time? A. As to the time of day, sir?

Q. Yes. A. It was in the morning.

403 Q. What hours did you work? A. 8:00 a.m. to 4:00 p.m.

Q. And how do you know this was in the morning? A. I can't exactly recall, but I am almost positive it was in the morning some time.

Q. Do you have an independent recollection that this was a morning call? A. Yes, sir.

Q. Is there something that made this call stand out in your mind? A. No, sir.

Q. Is there anything significant in it that allows you to

fix it in the morning? A. Well, sir, as I said, I was on duty from 8:00 a.m. to 4:00 p.m.

Q. Four hours in the morning and four hours in the afternoon? A. Yes, sir, and most of the activities took place in the morning.

Q. Most of it was in the morning? A. As I recall, sir.

Q. Now, after you heard this conversation involving a man named Bobby Baker, did you make any
404 inquiry as to who he was? A. No, sir.

Q. This was not a subject of interest to you? A. No, sir.

Q. Now, thereafter you recorded a conversation, did you not, which appears at page 6 in Defendant's Exhibit No. 2? A. Yes, sir, I did.

Q. And that was a call from Mr. Sigelbaum to Mr. Baker in Washington, is that right? A. Yes, sir.

Q. Can you tell us when that conversation took place? A. It was in the morning also, sir. I would have to—well, no, it was in the morning very definitely.

Q. That one stands out in your mind because they discussed microphone surveillance, is that right? A. No, sir.

Q. Didn't that make any impact on you? A. No, sir.

Q. It did not? A. No, sir.

Q. Did they talk about an article in the Miami Herald regarding microphone surveillance?

The Court: Is this page 6, Mr. Williams?

405 Mr. Williams: Yes, it is, Your Honor.

By Mr. Williams:

Q. They both agreed that microphone surveillance was a terrible state of affairs. That doesn't ring any bell in your mind? A. Not particularly, sir.

Q. It did not? A. No.

Q. Did you transcribe that conversation on tape? A. I beg pardon.

Q. Was that put on tape, that conversation? A. Yes, sir, it was.

Q. And does this purport to be a verbatim typewritten recordation of the transcription on tape? A. Which conversation are you talking about?

Q. 4/21/64. A. Yes, sir, but which conversation?

Q. Oh, were there two conversations with Mr. Baker?
A. Yes, there was. There were not two conversations with Mr. Baker. There was a conversation that Mr. Sigelbaum had before he talked to Mr. Baker with somebody in his office which is also on here. Which one are you
406 referring to?

Q. I am referring to the conversation with Mr. Baker. That is all I am asking you about, conversations with Mr. Baker. A. Yes, sir, and could I hear the question again, sir?

Q. Now, what time was it when he talked to Mr. Baker?
A. It was in the morning, sir.

Q. And was that a fairly lengthy conversation? A. Yes, sir.

Q. Once again, did they discuss the Serv-U Vending Company? A. Yes, sir, I believe they did.

Q. And did they discuss, to your recollection, the Carousel Motel? A. No, sir, not to my recollection.

Q. Did they discuss a hotel or a motel in which Mr. Baker had an interest? A. I have no idea of knowing what motel Mr. Baker has an interest in.

Q. Well, from the conversation that you typed up and to which you listened, did you learn that Mr. Baker
407 had an interest in a hotel? A. No, sir.

Q. You did not? A. Not to my knowledge.

Q. Now, at the end of the conversation on page 7 this time you have a T as a capital T. Does that have any different significance? A. No, sir.

Q. That also means terminate, does it, Mr. Dougherty?
A. Yes, sir.

Q. Now, you had a further experience listening to Mr. Baker and Mr. Sigelbaum on June 12th, did you not? A. Yes, sir, I did.

Q. And on that occasion they discussed a matter in California, business matter in California, is that correct? A. Yes, sir.

Q. Now, was this particular conversation also typed up from the record that was made of it? A. By record—

Q. The electronic record that was made of it, tape record?

A. Yes, sir.

408 Q. And is this a verbatim account? A. Yes, sir.

Q. Where it says, "Bobby this is not a question of getting the money now, I could have resolved that while we were in California." A. What page are you on?

Q. Page 8. A. Yes, sir.

Q. And at that time did they also discuss a difference that they were having over the conduct of the affairs of the Serv-U Vending Company? A. Serv-U was mentioned, yes, sir.

Q. Now they discussed, did they not, Mr. Dougherty, on this occasion, financial transactions between the two of them? A. I would assume so, sir.

Q. Well, I don't want you to assume. I want your best recorded recollection, if this is your best recorded recollection on the subject, is it? A. Yes, sir.

Q. Now, this conversation continues on through pages 8, 9, 10, and 11, is that correct, and even over on 12, is that correct? A. That is right.

409 Q. How long did that conversation last, Mr. Dougherty? A. I would have to guess, sir, perhaps twenty-five minutes.

Q. About twenty-five minutes? A. Yes.

Q. Now in that conversation they also discussed the tax impact of certain transactions that they were engaged in, did they not? What page are you on?

Q. Page 11. Specifically, I direct your attention to the language beginning about a third way down the page: "Now, at that time I was under the impression we were supposed to get that money that we laid out for Hancock, then I understand or felt that our attorney thought for tax

reasons it would be very good and he changed the deal, so, which meant that we did not get paid for Hancock." Is that correct? A. Mr. Williams, the only thing I can testify to is what is down here. What was meant by it, I would have no idea.

Q. But these are the words that you heard, is that correct? A. That is correct, sir.

410 Q. And, again, at the bottom of page 11 they talked about the deal that was made in California, is that correct? A. Yes, sir.

Q. Now, Mr. Dougherty, other than the conversations which I have referred you to, did you hear any other conversations between Mr. Sigelbaum and Mr. Baker? A. I monitored five conversations, Mr. Williams, in which Mr. Baker might have been a participant.

Q. Now, might he have been a participant in other conversations which you monitored and you did not identify the person to whom Mr. Sigelbaum was talking? A. No, sir.

Q. Couldn't have been participants in any other conversations, is that right? A. No, sir.

Q. Why do you say that, Mr. Dougherty? What is the basis of your saying that he could not have been a participant in any other conversation you monitored? A. We spent considerable time reviewing the log, Mr. Williams, to make sure that all the conversations in which Mr. Baker might have been a participant were included in this transcript.

411 Q. In every case in which Mr. Sigelbaum talked on the phone, did you identify in your transcribed reports the party to whom he was talking? A. In most cases, yes, sir.

Q. Were there some where you did not? A. There were some, yes.

Q. What percentage would you say that you did not identify the party to whom he was talking? A. A very small percentage.

Q. Very small? A. I am not sure I follow you. You mean, where he was talking on the phone to somebody?

Q. Yes. A. Yes, sir, there were some. I wouldn't be able to say how many percentagewise.

Q. What was the way in which you determined to whom he was talking on the phone? A. If he mentioned the name, if he placed the call long distance to a specific party or in a specific city.

Q. If he dialed directly and didn't mention the name, would you know to whom he was talking? A. No, sir.

Q. Did you have a pen indicator or pen register 411-A working? A. No, sir.

Q. Now with respect to calls that were incoming in so far as he was concerned, would you know to whom he was talking if he didn't address the person by name? A. In some cases, yes, sir.

Q. How would you do that, sir? A. By the nature of the conversation in some cases, but in most cases we would have to rely if he mentioned the name, Joe, Harry.

Q. Would you give us for our purposes here, to the best of your ability, an approximation of how many calls Mr. Sigelbaum made or that were made to him in which you did not identify specifically the party to whom he was talking? A. It would have to be a rough guess, Mr. Williams. I would say perhaps fifteen percent or twenty-five percent. I would have no way of approximating that.

Q. Well, you say, as I understand, fifteen percent or twenty-five percent? A. Well, if you want a rough guess perhaps that would be it.

Q. Approximately how many calls would Mr. Sigelbaum make and receive in the course of a day? A.

Perhaps ten.

Q. Ten? A. Ten.

Ten phone calls? A. Yes.

Q. All day long while you were listening? A. Yes, sir.

Q. Is that the average? A. This is a guess. I would have to guess at ten.

Q. Approximately how many hours would he be in the office on each day? A. Mostly in the morning.

Q. In the morning hours? A. Yes, sir.

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412

Terence Dougherty

Direct Examination (Resumed)

Mr. Williams: Your Honor, I have one last question to ask.

The Court: All right.

By Mr. Williams:

Q. Mr. Dougherty, other than yourself, Mr. Lane Bonner, Mr. Cyrus Falls and Mr. Richard Moehle monitored conversations in the Sigelbaum office, is that correct? A. That is correct.

Q. Was there anyone else who participated in the monitoring? A. Yes, sir.

Q. Who was that? A. Mr. Ronald Thixton and Edward Fleck.

Q. Spell the last two names, please. A. T-h-i-x-t-o-n, first name Ronald. First name Edward, last name Fleck, F-l-e-c-k.

Q. Now, are they both still attached to the Miami office of the FBI? A. No, sir. One of them is and one of them has since been transferred.

Q. Would you designate which one is? A. Mr. Fleck, I believe, is in the Columbia office. Mr. Thixton is still in Miami.

Q. Columbia, South Carolina office? A. That is correct. I believe so.

Cross-Examination

By Mr. Bittman:

Q. Now, Mr. Dougherty, during the period of time in which you monitored certain conversations in which it ap-

pears that Robert G. Baker was present or a participant, who was the case agent in charge of the Sigelbaum investigation? A. Special Agent Fred Doerner.

Q. Now, did he give you any instructions at any time with respect to that particular investigation? A. Yes, sir.

Q. Now you testified before that you would turn over the logs to your supervisor, is that correct? A. That is correct, sir.

Q. Now, would you then in the normal course of
414 your duties erase the tapes? A. Yes.

Q. The tapes were not turned over? A. No, sir.

Q. So everything that would appear that you overheard would be on the logs themselves, is that correct? A. That is correct.

Q. Which have been duplicated in verbatim form on defense exhibit which they showed you with respect to those conversations in which it appears that Baker was a participant or was present, is that correct? A. Yes, sir.

Q. Now, do you have any knowledge at all whether or not the supervisor who had received these logs would then in turn give the logs to the case agent involved, Mr. Doerner? A. Yes, sir, I would assume he did.

Q. All right.

Now, have you examined all of the Sigelbaum logs? A. I have, sir.

Q. And directing your attention specifically to those conversations which you monitored, how many times have you specifically gone over those conversations which you monitored pursuant to my request? A. Three times, sir.

415 Q. And what were my instructions to you in this regard? A. Your instructions were to review the entire log to make sure that any possibility of Mr. Baker being a participant in a conversation was noted and turned over.

Q. Did I also tell you that if there was any remote possibility that he was present— A. Yes.

Q. —or a participant to make sure you bring this to my attention so it could be turned over? A. You did, sir.

Q. In your examination of that particular defense exhibit that you were shown, were all such conversations turned over to the best of your knowledge? A. To the best of my knowledge, yes, sir.

Q. With respect to your entire review of the logs, even with respect to conversations which you did not monitor, did I give you the same instructions with respect to those? A. Yes, sir.

Q. Did you find any additional conversations in which it would remotely appear that Robert Baker was either present or a participant? A. No, sir, I did not.

Mr. Bittman: No further questions.

416 The Court: May this witness be excused, gentlemen?

Mr. Williams: Yes, Your Honor.

The Court: You may be excused.

(The witness left the stand.)

Mr. Williams: Mr. Bonner.

Whereupon

Lane Bonner, Jr.

was called as a witness by the defendant, and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williams:

Q. Mr. Bonner, will you state your full name, please, for the Court? A. My name is Lane Bonner, Jr.

Q. Where do you live, Mr. Bonner? A. Miami, Florida.

Q. How long have you lived there? A. Approximately four and a half years, sir.

Q. What is your occupation? A. I am employed as an Investigative Clerk by the Federal Bureau of Investigation.

Q. How long have you been so employed? A. Approximately nine years, sir.

417 Q. Where were you employed prior to being assigned to Miami? A. At Washington, sir.

Q. Washington, D. C.? A. Yes, sir.

Q. Field office or headquarters? A. Headquarters, sir.

Q. Were you there for the prior five-year period? A. Yes, sir.

Q. Directing your attention, Mr. Bonner, to the year 1964, were you assigned to monitor conversations emanating from the offices of Benjamin Sigelbaum in Miami, Florida? A. Yes, sir, I was.

Q. When were you assigned to that task? A. May of 1962, sir.

I am sorry. May I correct that, sir? January of 1963.

Q. Did you have any duties with respect to this case in May of '62? A. No, sir.

Q. What was it that caused you to say May of '62 in response to my question? A. That is the date that I
418 was assigned to the Miami office.

Q. That was the date you were assigned to Miami? A. Yes, sir.

Q. But you weren't assigned to this case when you went to Miami, were you? A. No, sir.

Q. You weren't assigned to this case until January of '63, is that right? A. January of 1963, yes, sir.

Q. Now, when you were assigned to this case, you were assigned to the specific task of listening to conversations emanating from Mr. Sigelbaum's office? A. Yes, sir.

Q. Those were your sole duties, were they, with respect to this case? A. Yes, sir.

Q. Now, what hours did you work? A. The hours varied, sir. There were times that I worked from eight to four and other times that I worked from four to midnight, sir.

Q. How long did you work at the task of monitoring conversations coming from Sigelbaum's office? A. From January of 1963 until July of 1965, sir.

419 Q. January until July? A. That—

Q. A period of about two and a half years? A. About, sir.

Q. Were you assigned to this particular matter all during that time to the exclusion of any other matter? A. Would you please repeat that, sir?

Q. Were you assigned to this matter during that two and a half year period to the exclusion of any other matter? A. Yes, sir.

Q. Now, was there a time when you were not able to hear conversations in that office? A. Yes, sir.

Q. When was that? A. What do you mean by when, sir? Or what—I don't understand your question.

Q. Was there a period of time when you weren't able to listen to the conversations in Sigelbaum's office? A. Yes, sir.

Q. When was that? A. When there was no one in the office.

Q. Well, during the whole period of time in which you were assigned to this task, was your electronic device
420 vice operative? A. Would you please repeat that?

Q. Do you not understand this or do you not hear it? A. I don't understand the question.

Q. Was there a time when the electronic device which you were monitoring was not operative? A. Yes, sir.

Q. When was that? A. During the period from midnight until eight o'clock in the morning, sir.

Q. Other than that it was operative all during the two and a half year period? A. No, sir, there were other times.

Q. When were the other times? A. Malfunctions.

Q. How many times did you have a malfunction? A. I do not recollect, sir.

Q. Were they for long periods or short periods of time? A. They varied, sir.

Q. How many times did you have a malfunction? A. I do not recall specifically, sir.

Q. Was there any period as long as a two-month period when you didn't hear anything? A. No, sir.

421 Q. Never was? A. No, sir.

Q. Was there any period as long as a two-week period when you didn't hear anything? A. No, sir.

Q. In other words, you were busy all the time listening to conversations in Mr. Sigelbaum's office during that two and a half year period except when you had a short malfunction? A. Would you repeat that, sir?

Q. Did you ever have a malfunction that lasted as long as a day? A. Yes, sir.

Q. What was the longest period that you had a malfunction so that you couldn't hear? A. I do not recall specifically.

Q. Did you ever have one that lasted as long as two days? A. Possibly, sir.

Q. It is possible? A. Yes.

Q. Did you have one that lasted as long as three days? A. I do not recall, sir.

Q. You don't recall any that lasted as long as
422 three days? A. No, sir.

Q. If there was a malfunction you wouldn't have anything to do, is that right? A. That is not correct.

Q. What would you do? Would you have to do other things unrelated to this case? A. Well, I was assigned to various administrative tasks, sir.

Q. Unrelated to this case? A. Yes, sir.

Q. Now, when you listened, Mr. Bonner, over this device, did you do any writing simultaneously with your listening? A. Occasionally, sir.

Q. What regularly did you do? Did you tape what you heard? A. Yes, sir.

Q. Is that what you did? A. Would you please—

Q. Did you sit in a room and listen to the conversations? A. Yes, sir.

Q. Was there anybody else in that room with you? A. At times, sir.

Q. Did those conversations come over a loud
423 speaker or did you hear them through earphones?

A. There were times that I heard them through earphones and times that they came through a speaker, yes, sir.

Q. When you listened over earphones was that because there was somebody else in the same room listening to other conversations? A. Would you please repeat that, sir?

Q. You don't understand the question? A. I would like for you to repeat it if you would, sir.

Q. When you listened with earphones was that because there was someone else in the same room attempting to listen to other conversations? A. At times that might be the reason, yes, sir.

Q. There were other times when that was not the reason? A. Right, sir.

Q. Did you generally listen over an amplifier or through earphones? A. Generally through the amplifier, yes, sir.

Q. When sound came through the amplifier did you automatically record what you heard? A. Not everything, no, sir.

Q. Were there things that you were told not to record?

A. Yes, sir.

424 Q. What were you told not to record? A. Conversations of a trivial nature, sir.

Q. You mean when the charwoman was in there cleaning up, you wouldn't bother recording if she had a word to say with some other charwoman? Right? A. No, sir.

Q. Other than that if Mr. Sigelbaum was a party to a conversation you recorded it, is that right? A. Would you please repeat that?

Q. Do you understand the question or do you not hear me?

The Court: Let the reporter read it back.

(Whereupon the question was read by the reporter.)

The Witness: Yes, sir.

By Mr. Williams:

Q. Now, were you given any instructions with respect to which conversations you should be alerted to, on the lookout for, and specifically record? A. Yes, sir, I was.

Q. What were those instructions? Who gave them to you? A. The case agent, number one, sir.

Q. Who was he? A. Mr. Doerner, sir.

425 Q. What did he tell you and when did he tell you?

A. He told me that I should be alert for any activities of Mr. Sigelbaum, travel arrangements, and any other activities related to his activity, sir.

Q. Any other activities relating to what? A. Any other activities that he might be involved in, sir.

Q. In other words, he told you to record everything that Mr. Sigelbaum was involved in, is that right? A. Excluding trivial conversations, yes, sir.

Q. Did he mention to you at any time Mr. Baker? A. No, sir.

Q. Never? A. Never.

Q. Did Mr. Sweeny ever talk to you about Mr. Baker? A. No, sir.

Q. Did anyone in the Miami office talk to you about Mr. Baker, conversations involving him? A. I do not recall specifically, sir.

Q. Well, do you have any general recollection on that subject?

Mr. Bittman: Your Honor, I object to the broad form of that question.

426 The Court: Overruled.

The Witness: Could that be read back, please?

The Court: Read that back.

By Mr. Williams:

Q. I will restate it at the same time.

Do you have any general recollection of instructions regarding conversations in which Mr. Baker was a party?

A. Sir, I received no instructions concerning Mr. Baker.

Q. Received none? A. None, sir.

Q. Now, did you learn during the course of your duties who Mr. Baker was? A. Yes, sir.

Q. How did you learn that? A. In the paper, I believe, sir. I am not quite sure.

Q. You learned in the paper? A. Right, sir.

Q. When was that? A. Subsequent to these activities. I do not recall. That's been quite sometime.

Q. When you say subsequent to these activities, 427 what activities do you refer to? A. The initial call in the Miami office involving Mr. Baker.

Q. The initial call into the Miami office involving Mr. Baker? A. Yes, sr.

Q. You are talking about the call into Mr. Sigelbaum's office? A. Well, I don't know the details of that call, sir. I do not recall.

Q. Didn't you read the log that you prepared on that call preparatory to your testifying here? A. Yes, sir.

Q. Did you read it a number of times? A. Yes, sir.

Q. Did you read it as recently as yesterday? A. No, sir.

Q. When was the last time you read it? A. I believe it was Monday, sir.

Q. Monday.

But you don't recall any of the details of it? A. Of the call that—

Q. Of the call—

Mr. Bittman: Your Honor, whether he recalls the 428 details is irrelevant to this hearing.

The Court: I sustain that objection.

By Mr. Williams:

Q. Is it your recollection that the call was made by Baker to the Miami office? A. No, sir.

Q. Well, is it your recollection that Mr. Sigelbaum called Mr. Baker? A. Yes, sir.

Q. I am going to hand you defendant's Number 2, and direct your attention to page 3, and ask you if that is the call to which you have reference? A. (Examining)

Yes, sir.

Q. When did that call come in, or when was that call placed? A. March 18, 1964.

Q. What time? Can you tell us? A. As I recall, it was 10:26 a.m., sir.

Q. How do you recollect that it was 10:26 a.m.? A. Sir, I reviewed the logs as of Monday.

Q. The logs recite that it was made at 10:26 a.m.? A. Yes, sir.

429 Q. Now, in that conversation do you recall, Mr. Bonner, that Mr. Baker and Mr. Sigelbaum discussed an Internal Revenue investigation as being conducted?

Mr. Bittman: Your Honor, I am going to object to this type of questioning. I believe we can save time. This is a three and a half page conversation. Now, for Mr. Williams to go through sentence by sentence or paragraph by paragraph accomplishes nothing and I believe to save time, I think the defense exhibit speaks for itself.

The Court: I will permit Mr. Williams to question the witness about it.

He may look at it if he wishes.

By Mr. Williams:

Q. You haven't answered the question, unless I didn't hear you. A. I am still looking at it.

Q. You are not looking at it, that is the problem. A. Will you repeat the question, sir?

Q. You don't remember the question? A. You asked me a general vague question, sir, and I don't recall exactly what it was.

430 Q. I asked you, Mr. Bonner, if you recall that the conversation was about an Internal Revenue Investigation involving Mr. Sigelbaum and Mr. Baker? A. The Internal Revenue Service was mentioned, yes, sir.

Q. Wasn't the beginning of the conversation all about an Internal Revenue investigation which subpoenas had been served on Mr. Sigelbaum? A. Those areas were mentioned, yes, sir.

Q. They were mentioned.

They also discussed, did they not, financial transactions between Mr. Sigelbaum and Mr. Baker, is that correct?

A. Yes, sir.

Q. They discussed matter concerning a bank in Oklahoma, is that correct. A. Yes, sir.

Q. They discussed a transaction involving \$22,500 in which a Fred was indentified, is that correct? A. Yes, sir.

Q. Now, this conversation, Mr. Bonner, as it is reported on defendant's Number 2, is that transcribed from a tape or is that from original notes by you. A. This was transcribed from the tape, sir.

431 Q. Did you do the transcript? A. Part of it, yes, sir.

Q. Did someone else do another part of it? A. I believe so, yes.

Q. How much did you do? A. I do not recall exactly.

Q. How long did this conversation last? A. Several minutes. I don't know exactly.

Q. When you say several, about what do you mean? A. Well—

Q. I call your attention to the fact that it runs over three and a half pages of defendant's Exhibit 2, three and a third pages. A. I would estimate ten minutes.

Q. About ten minutes? A. Yes, sir.

Q. Now, did you listen to the whole conversation? A. Yes, sir, I did.

Q. You listened to the whole conversation, but you didn't write it up? A. Part of it.

Q. Who wrote the other part? A. I do not recall, sir.

432 Q. Can you explain how that happened? A. My shift terminated at four o'clock, sir.

Q. You left at four o'clock? A. Right.

Q. And somebody else wrote the other half? A. Completed it.

Q. How are you able to tell us that at this time? A. By general recollection, sir.

Q. You have a general recollection independent of any record that when you were transcribing that particular conversation it came four o'clock and you turned it over to someone else to complete it, is that right? A. As I recall, yes.

Q. But you can't recall to whom you turned it over? A. No, sir.

Q. Would it have been one of the other monitors working on this case? A. Yes, sir.

Q. And they were six in unnumber, were they? A. I don't recall the specific number, sir.

Q. Well, do you remember Mr. Dougherty? A. Yes, sir, I do.

433 Q. Do you remember Mr. Falls. A. Yes, sir, I do.

Q. Do you remember Mr. Moehle? A. Yes, sir, I do.

Q. You remember them, do you? A. Yes, sir.

Q. Do you remember Mr. Thixton? A. Yes, sir, I do.

Q. Do you remember Mr. Fleck? A. Yes, sir, I do.

Q. Were there any others? A. I do not recall any others.

Q. Which one of those was it to whom you turned it over? A. I don't recall specifically, sir.

Q. Do you recall who spelled you in March of 1964 when you finished your shift? A. No, sir, I do not.

Q. Well, what was it about this particular conversation that caused you to remember that you didn't complete it? A. My general recollection is, sir, that I did not complete the conversation.

Q. Was there something about this conversation
434 that made it stand out in your mind? A. Yes, sir, there was.

Q. What was it? A. One comment in the conversation, sir.

Q. What was that? A. That Mr. Sigelbaum wanted Mr. Baker to handle the Washington situations.

Q. Where does that appear? A. Well, I will have to look it up, sir.

Q. All right. A. Last page, sir.

Q. Where? A. Page six, top of the page.

Q. Now, that was the very end of the conversation, is that correct? A. Yes, sir.

Q. You transcribed that? A. I do not recall, sir.

Q. You don't recall whether you transcribed that part of it. A. Well, sir, I am certain that I did not transcribe the complete conversation and that would include the end.

435 Q. Would you say that again, please? A. I am certain that I did not transcribe the entire conversation.

Q. You are certain that you did not transcribe the entire conversation? A. Yes.

Q. Well, did you transcribe the part about I will pick up the Washington situation? A. I am not sure, sir. That is toward the end so I assume that I did not transcribe it.

Q. Well, did you hear that part? A. Yes, sir.

Q. Did you hear that part as it was being recorded? A. Yes, sir.

Q. So that someone, whoever relieved you at the time, transcribed the balance, is that right? A. Yes, sir.

Q. Now, did you regard this as a significant enough conversation to call it to the attention of Mr. Doerner? A. I did not call it to the attention of Mr. Doerner, sir.

Q. Or to anyone of your superiors? A. No, sir.

436 Q. Did you call it to the attention of your relief man for the purpose of calling it to the attention of a superior? A. I may have, sir; I do not recall.

Q. Well, is it fair to say, Mr. Bonner, that you transcribed on your typewriter hundreds, maybe even thousands, of conversations in two and a half years, monitored — A. I don't recall the specific number. It is not fair to say that.

Q. It is not? A. No, sir.

Q. Would you tell me what is a fair estimate? A. I don't recall the total number.

Q. Approximately how many a day would you do? A. That might vary, sir.

Q. Well, I recognize it varied, but give me an approximation, an average, if you can. A. I have no basis for doing that, sir.

Q. You have no basis for giving an average number of conversations that you recorded? A. That is correct.

Q. Well, now, did you transcribe, if you recall, that portion on the page designated as four wherein Mr.
437 Sigelbaum talks to Mr. Baker about Internal Revenue and jeopardy assessments and the impounding of funds? A. Are you asking me if I transcribed it or—

Q. Yes. A. Yes, sir, I did.

Q. You did.

Now how is it you remember you transcribed that? A. I misspelled the word "jeopardy."

Q. You recognize that that is yours because you misspelled jeopardy? A. Yes, sir.

Q. Did you learn how to spell it since you transcribed it? A. I learned—

Mr. Bittman: I object, Your Honor.

The Court: Sustained.

By Mr. Williams:

Q. Now, going down further, Mr. Bonner, did you transcribe the portion about Eddie talking about their position in Oklahoma? A. Is that on page 4, sir?

Q. Yes. A. Would you repeat that, sir?

438 Q. I asked you whether you transcribed the portion that deals with Eddie, and maintaining, pertaining to the position in Oklahoma.

It is about two-thirds of the way down. A. I don't recall if I transcribed this particular part, sir.

Q. Well, now, directing your attention down to the bottom of page four, and specifically to this word on the second line from the bottom, you talked about the MAJIC stock, right?

Is that yours? A. What page is that again?

Q. Four. A. As I recall, it may have been, yes, sir.

Q. Yes.

Did you know then that that was Mortgage Guarantee Insurance Company stock? A. No, sir.

Q. Had you ever heard of Mortgage Guarantee Insurance Company in the conversation? A. No, sir.

Q. Did you know that that was referred to as 439 MGIC? A. No, sir.

Q. Well, did you think that—if you wrote that, did you think at the time you were talking about magic, m-a-g-i-c type magic? A. No, sir. Well, I don't recall actually, sir.

Q. When you wrote down M-A-J-I-C, you knew they were talking about stock, but you did not recognize it as being MGIC, Mortgage Guarantee Insurance Company? A. Right, sir.

Q. Now, do you recall whether it was you who transcribed the section at page five on the Howard Johnson? A. I do not recall, sir.

Q. And on the Serv-U stock? A. Page five, sir?

Q. Yes. A. I do not recall, sir.

Q. Are you able to give us any help after looking this over, Mr. Bonner, as to where it was that you finished your transcribing from the recording. A. I am sorry, but I am unable to do so, sir.

Q. You are not able to? A. No, sir.

Q. Do you recall the names of any of the monitors 440 other than the ones that I asked you about in a prior question here about five minutes ago on the Sigelbaum surveillance? A. Any other monitors?

Q. Yes. A. No, sir.

Mr. Williams: That is all, Your Honor.

Cross-examination

By Mr. Bittman:

Q. Getting back, Mr. Bonner, to that conversation of March 18, 1964, you testified that you heard this entire conversation, is that correct? A. Yes, sir.

Q. To the best of your knowledge, did you record it? A. Yes, sir.

Q. So the part you did transcribe came from the recording, is that right? A. Yes, sir.

Q. To the best of your recollection you even indicated that you recalled independently the last sentence in that conversation so you do have a recollection of hearing it and transcribing at least part of it, is that correct? A. Yes, sir.

Q. Now, pursuant to—let me ask you this, Mr. Bonner.

Do you have any recollection—I appreciate it
441 is over three years now—do you have and recollection that no conversations came in from the Sigelbaum suite between the period of time of September 19, 1963 and approximately November 18, 1963, that for approximately two months there were no conversations being heard?

Do you have any recollection of that? A. I don't recall that, no, sir.

Q. All right.

Do you have any recollection that between December 5, 1963, and December 27, 1963, that there were no conversations being heard? A. I don't recall that either, sir.

Q. All right.

Now, pursuant to my instructions, did you examine very carefully all of the conversations which you monitored which emanated from the office of Benjamin Sigelbaum? A. Yes, sir.

Q. And how many conversations did you find in which it appears, remotely appears that Robert G. Baker either was present or a participant? A. I believe it is eight, sir.

442 Eight conversations altogether? A. Myself, individually, sir?

Q. Let's start with conversations you yourself monitored. How many were there? A. Just this one, sir.

Q. That is the one of March 18, 1964? A. Yes, sir.

Q. Now, did you go forward at my instructions and examine all of the logs including even those conversations which you yourself did not monitor? A. Yes, sir.

Q. How many conversations of that nature did you find with Baker either remotely was present, or remotely, to the best of your knowledge, participated? A. Eight, sir.

Q. Are all those conversations included in that defense exhibit that you have before you? A. Yes, sir.

Q. And you have previously examined that at my instructions, have you not? A. Yes, sir.

Q. So this is not the first time you have seen that
443 particular exhibit or a copy of it? A. No, sir

Mr. Bittman: Thank you very much.

Redirect examination

By Mr. Williams:

Q. What percentage would you estimate for us, if you would, please, Mr. Bonner, of conversations over the telephone that you monitored during this two and a half year period were you unable to identify the party on the other end of the phone talking to Mr. Sigelbaum? A. I have no basis for determining the percentage.

Q. Would you give us your best estimate based on your two and a half year experience? A. I would say very few times.

Q. Very few times? A. Yes, sir.

Q. So that on most occasions you knew who the other party was? A. Yes, sir.

Q. Did you use a pen register?

Do you know what a pen register is? A. No, sir, I don't.

Q. Did you use anything which recorded the dial
444 ticks when Mr. Sigelbaum made outgoing calls A.
No, sir.

Q. Did Mr. Sigelbaum make his own outgoing calls?
A. As far as I know, yes, sir, he did.

Q. He didn't have a secretary make them? A. I do not recall any secretary making—

Q. When he had an incoming call were you able to hear the party on the other end of the line? A. No, sir.

Q. Does that refresh your recollection that you couldn't tell on a number of occasions to whom Mr. Sigelbaum was talking A. I stated a few occasions, sir.

Q. What percentage would you say? A. I don't know.

Mr. Bittman: I object, Your Honor. I think these questions have been asked and answered.

The Court: I think, Mr. Williams, he said he couldn't estimate it.

Anything further, gentlemen?

Mr. Bittman: I have nothing further, Your Honor.

The Court: May the witness be excused, gentlemen?

Mr. Williams: Yes, Your Honor.

The Court: You may be excused.

(The witness left the stand.)

445 Mr. Taft: Mr. Falls, please.

Whereupon

Cyrus T. Falls, Jr.

was called as a witness by the defendant and having been duly sworn, was examined and testified as follows:

Direct examination

By Mr. Taft:

Q. Would you state your name and address for the Court, please? A. Cyrus T. Falls, Jr. 321 Totolochee, T-o-t-o-l-o-c-h-e-e, Drive, Hialeah, Florida.

Q. What is your occupation, Mr. Falls? A. I am an Investigative Clerk.

Q. For the Federal Bureau of Investigation? A. Yes, sir.

Q. How long have you been employed by the FBI? A. Approximately ten years.

Q. Did there come a time when you—when were you first assigned to the Miami office? A. July 13, 1964.

Q. July 13, 1964? And have been so assigned since that time? A. I have been in the Miami office, yes, sir.

446

Q. Did there come a time, Mr. Falls, when in the ordinary course of your duties you were assigned to monitor a device which was in a room of Mr. Benjamin Sigelbaum? A. I monitored a device which I understand was in Mr. Sigelbaum's suite.

Q. Where did you monitor that device? A. Within the Miami office.

Q. Did you have a room set aside for monitoring that particular device? A. Yes, sir, we did.

Mr. Bittman: Your Honor, if we can save time, the Government would be willing to stipulate that the—as to the procedures that took place—if we could save time especially as to the various monitoring agents, I think it would be the same, and if we can save time, we will stipulate that the procedure is the same, with respect to Miami—unless they want to go over it all again.

The Court: Is that satisfactory to the defendant or do you want to ask the same questions individually?

Mr. Taft: Your Honor, we will agree to a stipulation as to the—

The Court: Very well, gentlemen. That will save
447 a little time.

By Mr. Taft:

Q. May I just recap it to make sure we both understand?

As I understand, you would monitor this device with a headset or by an amplifier, is that correct? A. We did monitor periodically with a headset.

Q. And when you heard information which was pertinent you would tape that information, is that correct? A. Yes, sir.

Q. And at a later time you would then write a log summary of the conversation on that tape? A. Yes, sir.

Q. Would you do it at a later time or contemporaneously? A. We would prepare handwritten notes at the time the conversation was taking place.

Q. You would also tape it? A. Yes, sir.

Q. At a later time would you make a separate summary from the tape or simply augment your original summary?

A. We would type a summary of our handwritten notes.

Q. Would you refresh your recollection from the
448 tape as well as you typed it? A. Yes, sir.

Q. And after that the tape was erased? A.
(Pause)

Q. Or reused? A. It was reused.

Q. It was not delivered to Mr. Sweeny or to the case agent? A. No, sir, it wasn't.

Q. Were you given instructions at any time as to what you should consider pertinent information which would be taped and logged in your records?

Mr. Bittman: Your Honor, the Government at this time will move to withdraw the stipulation, if we are going to go through this entire procedure again. I thought we stipulated to this.

Mr. Taft: Mechanically, yes, Your Honor, but as to instructions with respect—

The Court: I will permit you to ask the question. I think, gentlemen, that to the extent that you can stipulate as to recurring details that have similarity it would save the time of the Court as well as counsel, and that is desirable.

I am not going to cut you off from asking any
449 questions that you believe are material to your inquiry, but if you can stipulate as to material that seems to recur with each witness, it would be appreciated.

Mr. Taft: I would just like to go through the instructions, Your Honor, because they have varied when they relate to the defendant.

The Court: Very well.

By Mr. Taft:

Q. What instructions did you receive as to information that was considered pertinent? A. I was instructed to tape conversations that indicated Mr. Sigelbaum's travel plans or any of his business dealings.

Q. Did there come a time when you monitored a particular conversation which appears on page 12 of defendant's Exhibit No. 2? A. (Examining.)

Yes, sir, I monitored it.

Q. Did you know at that time, Mr. Falls, who the individual was that was referred to as Bobby? A. I did not know, sir.

Q. That name appears there only because you happened to hear it in Mr. Sigelbaum's conversation, is that 450-451 correct? A. There was indications of travel plans in here. There was also some indications of perhaps some business dealings.

Q. Just a moment, sir. I don't think you understood my question.

The name Bobby appears in your notes there only because you heard it mentioned by Mr. Sigelbaum, is that correct? That one word? A. Oh. When I arrived in the Miami office I was instructed or informed by one of my fellow employees that Mr. Baker was an associate of Mr. Sigelbaum, so the name Bobby appearing here, I included it.

Q. It stuck in your mind because of that prior conversation with a fellow employee A. Yes, sir, it did.

Q. Do you recall who that employee was? A. No, sir.

Q. Was it a fellow monitor? A. Yes, sir.

Q. When was the first time—

The Court: Would you hold it just a moment, Mr. Taft, while we change reporters?

452 Q. Mr. Falls, when was the first time that you began to monitor the Sigelbaum device, as best you recall? A. It would be the day I arrived in the Miami office.

In the beginning of July of '64, is that correct? A. Yes, sir.

Q. Did you regularly monitor that device thereafter? A. Yes, sir.

Q. Would you monitor it every day? A. Yes, sir.

Q. You were informed, were you not, that this device or this monitoring operation had been in operation for some period of time, is that not correct? A. Would you please repeat that question?

Q. You were informed, were you not, that the surveillance by means of this device had been in operation for a considerable period of time before you began to monitor? A. Yes, sir.

Q. And at the time that you began to monitor, you talked with your fellow clerks to familiarize yourself with the business of Mr. Sigelbaum, is that correct, so you would know what to consider pertinent? A. Yes, sir, I did.

Q. And was it in that context that Mr. Baker was
453 mentioned? A. Yes, sir.

Q. For what period of time after July of 1964 did you continue to monitor the Sigelbaum device? A. Approximately one year.

Q. So that you monitored it until it was disconnected from operation in July of 1965 approximately? A. Yes, sir.

Q. Mr. Falls, were there a number of occasions when you recorded and logged telephone conversations in which Mr. Sigelbaum was a party where you were unable to identify the party on the other end of the phone? A. Would you please restate the question, sir?

Q. Were there occasions when you were unable to identify the other party on the other end of the phone in a conversation Mr. Sigelbaum was holding? A. Yes, sir.

Q. In other words, the name of the party on the other end was not mentioned in the conversation? A. Please state the question again, sir.

Q. If the name of the party on the other end was not mentioned in the conversation, you were unable to identify who the phone call was with? A. Yes, sir.

Q. Did that happen very often, Mr. Falls, as you
454 recall? A. Not often, sir.

Q. You have reviewed all of the logs that you prepared, have you not, in the last few days? A. Yes, sir.

Q. And did you in fact come across ones where you had been unable to identify the party involved? A. Yes, sir.

Q. Would it be as many as one out of every ten or some figure that you could estimate for us? A. I couldn't estimate, sir.

Q. It might be more? It might be ten or fifteen percent, you are just unable to give us an estimation? A. I would say that it would be one out of about every fifteen, yes, sir.

Q. Mr. Falls, do you happen to know the code number for this particular surveillance device?

Mr. Bittman: I object, irrelevant and immaterial with respect to this agent who monitored conversations.

The Court: If he knows, he can testify.

The Witness: The device itself, sir?

Mr. Taft: Yes.

The Witness: M.M. 852-C.

455 Mr. Taft: No further questions, Your Honor.

The Court: Mr. Bittman.

Cross examination

By Mr. Bittman:

Q. Mr. Falls, you examined all of the logs at my request, did you not, sir, including the ones—including those you did not yourself monitor? A. Yes, sir, I did.

Q. Did I ask you to check very carefully and indicate to me if there are any other conversations in addition to those which appear on that exhibit before you in which there is even a possibility that Robert G. Baker could have been present or a participant? A. We were instructed to review any and all logs and turn over to you any that had even the remotest possibility of being Mr. Baker.

Q. Did you find any such conversations in which it appeared Baker was present or a participant other than those in the sheet of paper or the Defendant's Exhibit before you which you have seen a copy of? A. None whatsoever.

456 Redirect examination

By Mr. Taft:

Q. It is true, is it not, Mr. Falls, that every single conversation appearing on Defendant's Exhibit No. 2 refers either to Mr.—has the words "Bob, Bobby, or Robert Baker"; is that not true? A. I would have to examine them, sir.

Q. Can you? A. Would you state your question again, sir?

Q. It is true, is it not, that each of the conversations which appear on Defendant's Exhibit No. 2 expressly refer to Mr. Baker by name, either as Bob or Bobby or Mr. Baker or Robert Baker, is that not true? A. Each of them refer to Robert Baker, Bobby Baker or Robert.

Q. Therefore, when you conducted your examination in accord with the instructions in these last few days, you concluded that no conversation had even the remotest connection with Mr. Baker unless it mentioned that name, is that not true? A. Would you state the question again, sir?

Q. When you made your review of the logs, all of the logs, in accord with the instructions in the last few days, to determine whether or not all of the calls had
457 been included on that list that referred in the remotest way to Mr. Baker. When you conducted that review, the only calls that you came up with referred to Mr. Baker by name, is that not true? A. Yes, sir.

Q. So that the other conversations in your opinion did not have a possible connection in any way unless it happened to mention the name of Mr. Baker, is that not true? A. Based on my examination of the logs there were no further conversations which in any way had any connection with Mr. Baker.

Q. And that is because his name was not mentioned in any way, is that not true?

Mr. Bittman: I object, Your Honor. This is repetitious.

The Court: I don't think it is.

The Witness: From the facts that we knew about the case or from the facts that I knew about the case and as I examined each log word for word there was nothing in there that would indicate in the remotest possibility that Mr. Baker was a participant.

By Mr. Taft:

Q. But the only way you could tell if he was even remotely connected is when his name was referred to,
458 is that not correct?

Mr. Bittman: I object. It's repetitions.

The Court: I am going to permit the question. Do you understand the question, Mr. Witness?

The Witness: Yes, sir, I do.

The Court: All right.

The Witness: We reviewed it to, based on our knowledge of the case, based on the association I understood existed between Mr. Baker and Mr. Sigelbaum and there was no other calls which indicated that there was, it was to Mr. Baker, based on what I knew about the case itself, based on what I understood of their relationship.

By Mr. Taft:

Q. Well, did you know anything about this relationship between Mr. Baker and Mr. Sigelbaum other than the single conversation that you recorded on July 30 of 1964?

A. Would you please restate the question, sir?

Q. Did you know anything about that relationship other than what appears in the conversation that you monitored on July 30 of 1964? A. Only what my fellow employees had informed me.

Q. And what did they inform you? A. They informed me that periodically Mr. Sigelbaum would either place
459 a call to Mr. Baker in Washington, or a call would be received from Mr. Baker in Washington.

Q. And that is all that they informed you about the relationship between these two individuals? A. I under-

stood but I don't recall distinctly that there was some type of business relationship.

Mr. Taft: No further questions, Your Honor.

Mr. Bittman: No further questions, Your Honor.

The Court: May the witness be excused?

Mr. Taft: May the witness be excused?

Mr. Taft: Yes, Your Honor.

The Court: You may be excused.

(Witness excused.)

Whereupon,

Richard E. Moehle

was called as a witness, and after having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Williams:

Q. State your full name, please. A. My name is Richard E. Moehle.

Q. Where do you live, Mr. Moehle? A. I live in Miami.

Q. Where do you live in Miami? A. 6420 West 460 Flagler Street.

Q. How long have you lived there? A. Approximately three months, sir.

Q. Where did you live before that, sir? A. At 220 Northwest 63rd Avenue, in Miami.

Q. How long have you lived in Miami, Mr. Moehle? A. I have lived in Miami since 1957.

Q. How are you presently employed? A. I am presently employed by the Federal Bureau of Investigation.

Q. How long have you been so employed? A. For five years.

Q. In what capacity are you employed by the Federal Bureau of Investigation? A. I am employed as an investigative clerk.

Q. And have you been employed in that capacity for the whole period of your employment with the Federal Bureau of Investigation? A. No, sir.

Q. How long have you been an investigative clerk? A. For approximately two years.

Q. Directing your attention to the year 1964, did you participate in a microphone surveillance on Mr. Benjamin Sigelbaum? A. Yes, sir, I did.

Q. And when did you begin with respect to that particular assignment? A. It was in the middle of November, 1964.

Q. Was that at the time that you became a clerk? A. An investigative clerk, sir?

Q. Yes. A. Yes, sir.

Q. In other words, that was your first assignment when you became a clerk, to monitor or to listen to the conversations emanating from Mr. Sigelbaum's office? A. Yes, sir, that is correct.

Q. And you can fix that point of time as being November of '64? A. Yes, sir.

Q. And what date was that, Mr. Moehle? A. I believe that it was November 15.

Q. Now at the time that you began this assignment did you receive instructions from any superior in the Miami office? A. Yes, sir, I did.

Q. From whom did you receive the instructions? 462 A. I received instructions from Mr. Howard Wayne Swinney.

Q. Is that S-w-i-n-n-e-y? A. Yes, sir.

Q. What did Mr. Swinney tell you? A. Mr. Swinney told me to report to the monitoring unit and begin working there.

Q. Is that all he told you? A. Yes, sir, that is all. He told me that further instructions would be given to me by the people that were already assigned there.

Q. And were further instructions given to you by people already assigned there? A. Yes, there were.

Q. Who gave you those instructions? A. Mr. Falls and Mr. Barnard.

Q. These were both investigative clerks like yourself who had been on this case for some time, is that correct?

A. Yes, sir, that is correct.

Q. What did they tell you? A. Well, they explained to me the general functions of the unit and they showed me how to make out the logs giving me the general back-
463 ground on the various administrative functions of the unit.

Mr. Williams: Your Honor, I will not burden the record by going through the manner in which the conversations that he heard involving the defendant Baker were recorded and listened to if the Government will stipulate that they were recorded to and listened to in the same way and that the recordation and listening to these conversations constituted what I understand the stipulation is, a constitutional violation of the defendant's rights.

Mr. Bittman: We have already discussed this. I don't think Mr. Williams has to refer to unconstitutional aspects of this in open court. There have been conversations at the Bench. I haven't alluded to things he has said. I resent it. I don't think it is proper.

The Court: Gentlemen, if you want to come to the Bench, come to the Bench.

Mr. Bittman: I ask to come to the Bench.

(At the bench:)

Mr. Bittman: I think again this is just an effort by the defense to try to create a lot of publicity.

Mr. Williams: No publicity at this time.

The Court: One at a time.

Mr. Bittman: The stipulation that I offered to
464 save time was that the procedures were the same.

Both in Chambers and at the Bench, Your Honor, I have agreed unequivocally, without hesitation about the nature of the Government's agreement with respect to the

pick-up and monitoring of these conversations. There is no necessity of Mr. Williams with all the presence in the courtroom to make statements we stipulate to the unconstitutional aspects of this that is what I object to and that is what I resent.

I just don't think it is necessary. He knows what I have agreed to.

Mr. Williams: Of course it is necessary. We are trying to show in each instance there was an unconstitutional violation of this defendant's rights. In accordance with instructions we are moving on to question of causation regardless of whether the burden falls on that. If you are willing to say with respect to the conversation that this man heard that it was the same as the others and this, too, was an unconstitutional violation, we are not going to go into it.

Mr. Bittman: Mr. Williams, how often do you want me to say it on the record. I have said it three times. If you want me to say it a fourth or fifth time, I will do so.

The Court: Wait a minute. That is clear on the record the Government's concession. It need not be repeated.

465 If you gentlemen can shorten the interrogation of these witnesses, it will be appreciated.

Mr. Williams: We are trying to. I think we are moving pretty fast.

(In Open Court:)

Mr. Williams: Your Honor, I will move on strictly to the conversation itself.

The Court: All right.

By Mr. Williams:

Q. On December 30, 1964, did you, Mr. Moehle, hear a conversation between Mr. Baker and Mr. Sigelbaum? A. Sir, I heard a conversation in which Mr. Sigelbaum addressed an individual that I could not hear as Bobby.

Q. That you could not hear? A. I could not hear the individual.

Q. You say you could not hear the individual but you could hear Mr. Sigelbaum address him as Bobby, is that correct? A. Yes, sir, that is correct.

Q. This was an incoming call, is that correct? A. Yes, sir.

Q. Did you ascertain where the call came from? A. No, I did not, sir.

Mr. Williams: Do you have Defendant's Two?

By Mr. Williams:

466 Q. Now in that conversation, Mr. Sigelbaum addressed the party to whom he was talking as Bobby, is that correct? A. Yes.

Q. And they discussed certain payments of money in that conversation, is that correct? A. Yes.

Q. In fact, they discussed three payments of \$7500, is that right? A. Yes, that is correct.

Q. And then they discussed, did they not, how those payments would be treated for tax purposes, is that correct? A. Yes, sir.

The Court: What page is this, Mr. Williams?

Mr. Williams: Page 13, Your Honor, of Defendant's Exhibit Number Two.

The Court: All right. I have it.

By Mr. Williams:

Q. And Mr. Sigelbaum told Mr. Baker or the party to whom he was talking to take up a certain matter with his accountant, is that correct? A. Yes, sir, that is correct.

Q. And they discussed, did they not, a certain ex-
467 change of letters? A. Yes, they did.

Q. Now in that conversation, there was a reference was there not, between Mr. Sigelbaum and Mr. Baker and the grand jury was sitting on Mr. Baker's affairs? A. Yes, there was.

Q. Was that the first time that you knew that a grand jury was sitting on Mr. Baker's affairs? A. No, sir, it was not.

Q. You were advised prior to this that there was a grand jury investigating Mr. Baker and his transactions? A. I remember that there were a great many headlines at the time concerning Mr. Baker's appearance, not specifically, I don't specifically remember a grand jury but his appearance in front of some sort of legislative body.

Q. But this conversation related specifically to a grand jury as distinguished from a legislative body, did it not?

A. Yes, sir.

Q. Did you have any conversation about this conversation with your superiors or any other investigative clerk?

A. No, sir.

Q. You transcribed it from the tape, or did you transcribe it simultaneously with your hearing it? A. No,

I took notes on the conversation as it went along
468 and then after it had completed, when I got a chance,

I transcribed the conversation from the tape using my rough draft notes as a guide.

Q. Did you then destroy your rough draft notes or were they preserved? A. No, I destroyed them.

Q. You destroyed them. Then from your notes and from the tape recorder you prepared what is included here on page 13 of Defendant's Exhibit Two, is that right?

A. Yes, that is correct.

Q. Now, how long did you monitor on the electronic device that was picking up conversations in Mr. Sigelbaum's office? A. It was from November, I believe November 15 of 1964 until the middle of July 1965.

Q. Now during that time, Mr. Mochle, did you hear Mr. Sigelbaum talk on the telephone to persons whom you were not able to identify? A. Yes, I did.

Q. Did you hear him talking in his office in non-telephonic conversations to persons whose identity you did not know? A. Yes, I did.

Q. And would you say from—did you review the
469 logs of, that you had prepared during this seven
and a half month period or eight month period? A.
Yes, I did.

Q. From the review that you made of those logs, what percentage of the time would you say Mr. Moehle, you were unable to identify the other party to the telephone talking to Mr. Sigelbaum? A. It's hard to give you an exact percentage figure on it.

Q. I recognize that. A. I would say off-hand that we identified most of the people he talked to.

Q. Yes, sir.

Well, would you say you were unable to identify the people as high as a third of the time? A. No, sir. I think we were able to identify them more than that.

Q. Would you give me your best estimate? I am talking about telephone conversations. A. Well, the best estimate I can make to the best of my knowledge, I think we identified probably 75 percent of the people he talked to.

Q. On the telephone? A. Well, let's say between 470 65 and 75 percent of the people he talked to.

Q. Thank you very much.

The Court: Mr. Bittman.

Cross Examination

By. Mr. Bittman:

Q. In your review of all the logs, were there any other conversations other than those which you have before you which you previously examined, is that correct? A. Yes, sir. I previously examined them.

Q. Are there any other conversations which appear in the log which indicate even remotely that Robert G. Baker was either present or a participant? A. There are no other conversations.

Mr. Bittman: No further questions.

The Court: May the witness be excused, gentlemen?

You may be excused.

(Witness excused.)

Whereupon,

Carlton A. Giovannetti

was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williams:

471 Q. Would you state your full name please, Mr. Giovannetti? A. Carlton A. Giovannetti.

Q. Where do you reside, sir? A. 6011 Grove Drive, Alexandria, Virginia.

Q. How long have you resided there? A. Approximately 12 year.

Q. What is your occupation, Mr. Giovannetti? A. I am a retired special agent of the Federal Bureau of Investigation.

Q. Are you gainfully employed at the present time? A. No, I am not.

Q. How long have you been retired, sir? A. Since December 1965.

Q. How long did you serve, Mr. Giovannetti, as special agent? A. 25 years.

Q. Directing your attention specifically to the year, 1963, did there come a time when you were assigned to a case involving a microphone surveillance of a suite at the Carlton Hotel in Washington, D. C. A. Yes, sir.

Q. Will you tell the Court, please, when that was? 472 A. During February to April, 1963.

Q. And when, specifically, if you can recall, did you receive an assignment to the case in which that microphone surveillance was conducted? A. I'd say approximately February of 1963.

Q. Now would you tell the Court what your duties were with respect to that surveillance? A. I was instructed to monitor conversations emanating from Mr. Black's suite and prepare a log.

Q. And what was Mr. Black's suite? A. Mr. Black was in 438 and 440.

Q. And during what hours did you monitor the conversation? A. We were on a 24-hour basis and I would go to our monitoring position at approximately 4:00 p.m. in the afternoon and get off about 4:00 p.m. the following day.

Q. In other words, you were on a 12-hour stretch, is that correct? A. 24 hour.

Q. Four o'clock in the afternoon until four o'clock the next afternoon? A. That is right.

Q. I see. Was anyone with you during that 24-473 hour period? A. No, sir.

You were all alone? A. Yes, sir.

Q. Where was your monitoring position? A. In Room 436.

Q. And was that the room immediately next to Mr. Black's suite? A. Mr. Black's room was 438, so I assume that was next to his room.

Q. Had you ever been in Mr. Black's suite? A. No, sir.

Q. So you are not able to tell us how large it was? A. No, sir.

Q. What kind of device, if you know, were you listening on, Mr. Giovannetti?

Mr. Bittman: Your Honor, again, this has all been testified to yesterday by Agent Pennypacker. It's cumulative.

Mr. Williams: Yesterday, Your Honor, Mr. Bittman objected when I attempted to examine Mr. Pennypacker on the basis he wasn't the monitor. Now the monitor is here and I want to find out how it was monitored.

474 The Court: As to the nature of the device, I believe Mr. Pennypacker described the device. I don't remember the name of it.

Mr. Williams: He said he'd never seen it.

The Court: He said the name of the device. I don't object to your asking the question. Let's avoid cumulative testimony.

Mr. Williams: Yes, sir.

The Witness: Would you repeat the question, please?

By Mr. Williams:

Q. Would you tell us, Mr. Giovannetti, in your own words, in your own descriptive words, what kind of a device it was that enabled you to listen to the conversations in Mr. Black's room? A. Well, all I know it was a microphone.

Q. It was a microphone? A. Yes.

Q. Did it produce sounds that were audible to the naked ear or was it necessary for you to wear a head set?

A. We wore a head set.

Q. You wore a head set? A. Yes, sir.

Q. Did you have a tape recorder in the room?

475 A. Yes, sir.

Q. And did you keep the tape recorder on at all times when somebody was talking in the next room? A. Yes, sir.

Q. So that you got verbatim tapes of everything while you were monitoring in the next room? A. Yes, sir.

Q. And then from those verbatim tapes, did you prepare written transcripts? A. Yes.

Q. Did you do that yourself? A. Yes.

Q. Did you do it with a typewriter or did you do it in handwritten logs? A. In longhand.

Q. In longhand. And did you do that while you were on the job or did you do it after you finished your 24-hour duty? A. While we were on the job.

Q. You did it while you were on the job.

Now, were those logs preserved, sir? A. I don't know.

Q. When is the last time you saw them? A. I re-
476 viewed some Xeroxed copies of those logs on the 14th of this month.

Q. Xeroxed copies of your longhand? A. Yes, sir.

Q. Where did you do that, in Mr. Bittman's office? A. In the Departmental office.

Q. In the F.B.I. office? A. No, right here in the Federal Building.

Q. Right here at the courthouse? A. Yes, sir.

Q. That is right? A. Yes, sir.

Q. Now Mr. Giovannetti, after you worked for a 24-hour period, would you be off for 24 hours, is that the way it worked, and someone else would stay on for 24 hours? A. Yes, sir.

Q. And who was it that was working on this assignment over this three month period with you? A. There was Agent King, Agent Wood, Agent Sloan, and I think there was an agent, Agent Shores and a Sergeant Shackelford.

Q. When you went on this assignment, did you receive any instructions from any superior officer in the 477 F.B.I.? A. Agent Pennypacker.

Q. When did he give you those instructions? A. When we went on the job.

Q. That was in February of 1963? A. 1963.

Q. What did he tell you? A. To monitor conversations emanating from Mr. Black's suite and prepare a log.

Q. Did he tell you about any of Mr. Black's associates so that you could identify their voices? A. No, sir.

Q. Did he give you any background of the investigation or any background information to equip you to identify people who would be talking in that suite? A. No, sir.

Q. And you began on February 7, is that correct? A. To my knowledge, it was the 7th or 8th.

Q. Now, on the first day that you were on the job on either the 7th or the 8th of February, were you able to identify all the persons who were talking in that suite? A. No, sir.

Q. When you were not able to identify a person who was speaking in that suite did you write down unidentified man or unidentified woman as the description of the person who was speaking? A. Yes.

Q. Now, on the next day, on February 9, if that be the next day, or the second day, you did hear a conversation between Mr. Baker and Mr. Manitos, is that correct? You can look at that. A. Can I look at this?

Q. Sure. A. It is on February 9, 1963?

Q. Yes.

Is that correct? A. Yes, sir.

Q. Now, how were you able to identify Mr. Baker? A. He said he was Bobby Baker.

Q. He made a phone call and said this is Bobby Baker? A. Yes, sir.

Q. Is that the way you were able to identify him? A. Yes, sir.

Q. Is that the way you were able to identify him during the whole period of your surveillance at the Carlton? A. If he used the name, Mr. Baker, or Bobby Baker, I identified him that way.

Q. Now, do you recall, Mr. Giovannetti, either from looking at Defendant's Exhibit No. 1 or from studying your logs, when it was that Mr. Baker entered that suite 479 on the 9th of February? A. No, I don't recall, sir.

Q. Can you tell us approximately how long he was in the suite on that day? A. No, I can't. I can't say that.

Q. Well, are you able—can you tell us what time you arrived that day for duty? Was that 4 P. M.? A. Normally, it would be 4 P. M., sir.

Q. Can you tell us when you arrived at that day—February 9—whether there were people already in Mr. Black's suite conversing? A. No, sir.

Q. You are not able to tell us that nobody was there? A. Well, to my knowledge and from a review, what I recall and a review of the log, the only person that was in Mr. Black's suite at that time was Mr. Bobby Baker.

Q. He was there when you arrived? A. Either arrived or shortly thereafter.

Q. Now, who was it that you relieved on that occasion? A. I don't recall.

Q. You don't remember that. But you do remember that he was either there or did arrive shortly afterwards? A. Yes, sir.

480 Q. Well, when you looked at your logs, Mr. Giovannetti, did they refresh your recollection by

indicating what time the conversation was picked up which appears at the top of Defendant's No. 1, page 1? A. I don't understand your question.

Q. Well, I will try to restate it. You have looked at your logs. I think you told us you looked at them on the 14th or 13th of November, is that correct? A. 14th and 15th.

Q. 14th and 15th. And you studied all of your logs at that time here in the courthouse? A. Yes, sir.

Q. Now, when you looked at your logs, your attention was directed by Mr. Bittman specifically to those logs in which conversations were picked up involving Robert Baker, isn't that so? A. No, sir.

Q. You were not. You looked at all your logs? A. We looked at all the logs.

Q. Now, did you note at what time this first conversation involving Baker took place? A. No, sir.

Q. Can you tell us approximately how long Baker was in the Black suite on that occasion? A. No, I cannot.

Q. You have no independent recollection of it?
481 A. No, sir.

Q. Now, in this first conversation, that appears at the top of page 1, do you recall whether these long-hand notes were made by playing the tape recorder back or whether they were made contemporaneously with the conversations you were hearing? A. Well, it would vary, sir. Sometimes if I was able to write them down as the conversation was being carried on I would do it. If not, if the conversation was long I would have to play it back.

Q. Did you know on February 9 when you heard this conversation who Bobby Baker was? A. No, sir.

Q. You never heard of him? A. No, sir.

Q. This was the first time you ever heard of Bobby Baker, is that correct?

Mr. Bittman: I object; he just answered that question.

The Witness: Yes, sir.

By Mr. Williams:

Q. When was it that you learned what his occupation was? A. I don't think I recall when I learned of his occupation.

482 Q. Was it during the period of this surveillance?

A. Not to my knowledge.

Q. Did you ever become familiar with Mr. Baker's voice? A. No.

Q. So that the only conversations which you identify one of the participants as being Bobby Baker are those conversations in which he is addressed as Bobby Baker, is that correct? A. Yes, sir.

Q. Or in which he identifies himself on the telephone as Bobby Baker, is that correct? A. Yes, sir.

Q. Is that true of the whole three-month period in which you were on this surveillance? A. Yes, sir.

Q. Now directing your attention, Mr. Giovannetti, to page 6 of Defendant's Exhibit No. 1, about half way down the page it is recited, Bobby Baker made a telephone call and asked for Extension 6241 and asked if Dotty is there and there was a pause and said, "This is Baker." Now, the reason you knew that was Bobby Baker is because he identified himself over the phone? A. Yes, sir.

Q. Now, on that occasion, the notes that appear in Defendant's Exhibit No. 1, run, on page 6, 7, 8 and part of page 9. Did you make that whole record yourself,
483 Mr. Giovannetti? A. Yes, sir.

Q. Was that made simultaneously with what you heard or was it made from a playback from the recording machine? A. A playback from the recording machine.

Q. Was that playback made the same day or during the same working tour of duty? A. Yes, sir.

Q. And it was made in longhand? A. Yes, sir.

Q. And would you turn in your logs in longhand to whomever you made your report? A. I turned them into Agent Pennypacker.

Q. In longhand? A. Yes, sir.

Q. And, is this the form in which they were turned in to Agent Pennypacker except for the fact they were handwritten? A. Yes, sir, and not this type of paper.

Q. I understand these are verbatim except it was a different form they took; they were handwritten instead of typed, is that correct? A. Yes, sir.

Q. Do you have any recollection independently or from having reviewed your logs as to the time of day in which all this transpired, reported on page 6, 7, 8 and 9 of Defendant's No. 1? A. I could recall that they were probably after four P.M., five P.M.

Q. And, do you remember how long Baker was in the suite on that occasion? A. No, sir.

Q. Could you give us some approximation? A. I couldn't approximate, sir.

Q. By your own recollection or from looking at your notes? A. No, I couldn't recall.

Q. What? A. No, I cannot recall.

Q. When you were there, Mr. Giovannetti, monitoring at 4 o'clock, was there conversation in that suite every day? A. No, sir.

Q. Were there days when you heard no conversation? A. Yes, sir.

Q. How many days of that kind were there? A. I would say more than 50 per cent of the time.

Q. That you heard no conversation? A. Yes, sir.

Q. Between what hours? A. From 4 P.M. until 4 P.M. the following day.

Q. So that you would sit there with your tape recorder off but your amplifier on and nothing would happen, is that correct? A. With the earphone on, sir.

Q. With the earphones. Now, Mr. Giovannetti, directing your attention to March 11, which appears at page 9. Is that a day in which you picked up conversations? A. Yes, sir.

Q. And was that a day in which Mr. Baker and Mr. Black were in conversation in the suite? A. Yes, sir.

Q. And, can you tell us how long they conversed that day? A. No, I cannot.

Q. Well, would your logs show that? A. It would show the time and the time they stopped, yes.

Q. When you reviewed your logs on the 14th and 15th of November, did you note how long they spoke on this particular occasion? A. No, sir.

Q. Now, directing your attention, Mr. Giovannetti, to March 27, you at that time heard Mr. Baker talking on the phone, is that correct? A. Yes, sir.

Q. Can you tell us approximately what time that was? A. No, sir. Not the exact time but it was probably in the afternoon.

486 Q. And do you recall how long they conversed on that occasion? A. No, sir.

Q. Do you remember, Mr. Giovannetti, that there was conversation about Black needing \$50,000 for a facility in California? A. Would you give me that page, sir?

Q. Page 11. A. I see it here, yes, sir. What is your question?

Q. Do you recall that conversation, sir? A. I remembered it after having refreshed my memory by reviewing the logs.

Q. Did you have an independent recollection of that or is it simply your past recollection recorded in your logs? A. Past recollection recorded.

Q. Now, directing your attention over to page 14—But, first of all, I would ask you about whether you overheard Mr. Baker talking on March 27 of 1963? A. I beg your pardon. I didn't understand.

Q. Did you hear him talking in that suite on March 27 of 1963? A. Yes, sir.

Q. And was that in a telephone conversation? A. Yes.

487 Q. And, did you also hear him talking to Mr. Black? A. On this particular day?

Q. Yes. A. Would you repeat the question, sir?

Q. On that day, did you hear him talking to Mr. Black at any time? A. If it is not in here, it is no indication he didn't talk to him.

Q. Did you hear him talking to anybody in the room that day, Mr. Giovannetti, other than on the phone? A. I think there was an individual who came down and I think it is shown on page 14.

Q. But you are not able to say who that individual was, is that correct? A. Well, we indicated that it was a Mr. Hancock.

Q. Probably Hancock? A. Yes.

Q. Did you know which Hancock that was, sir? A. No, sir.

Q. Did he address him as Mr. Hancock? A. Yes, sir.

Q. In other words, Mr. Baker addressed the otherwise unknown male who entered the room as Mr. Hancock?

488 A. Yes, sir.

Q. That is why you put it down? A. Yes, sir.

Q. You put down "Probably Hancock" is that right? A. Yes, sir.

Q. And the reason you knew it was Mr. Baker this day is because he made telephone calls and identified himself as Mr. Baker, is that correct? A. Yes, sir.

Q. Now, on this particular day, he had a number of business discussions in that suite, did he not? A. Yes.

Q. And he made a number of phone calls including some long distance calls, is that correct? A. Yes.

Q. In fact, he made an overseas call, did he not? A. Yes.

Q. And each of these calls with the exception of one at least and perhaps two to his wife were business calls, were they not? A. I assume, sir.

Q. Well, he discussed matters that you could identify as being business matters, did he not? A. Yes.

489 Q. And in one of those conversations he called Mr. Levinson in Las Vegas, is that correct? A. He called a Mr. Levinson, yes.

Q. Did you know who Mr. Levinson was? A. No, sir.

Q. Did you know who Mr. Sigelbaum was? A. No, sir.

Q. And that is true all during the time that you were conducting the microphone surveillance of the Black suite?

A. Yes, sir.

Q. Now, at page 14, Mr. Baker is in a conversation with Mr. Levinson, is he not? A. Yes.

Q. And when he was talking to Mr. Levinson, was he talking to him in a face-to-face conversation? Was Mr. Levinson there present or was it a telephone conversation?

A. Would you repeat that, sir?

Q. Was the conversation with Levinson a face-to-face conversation or a telephone conversation? A. It was a telephone conversation.

Q. I want to call your attention to something, Mr. Giovannetti, because I am confused by it. If you will look at page 14. Baker talks on other telephone and says to come down to 438. Baker goes back to Levinson and
490 says that was Hancock, he is there. He was talking to Levinson on the phone at that time? A. Yes.

Q. That is not intended to indicate Levinson was there present in the suite? A. No.

Q. He told Levinson that Hancock was present in the Hotel and he would come down, is that right? A. Yes.

Q. It was then that he went on to discuss an offer that they were making to buy some company, is that so? A. Yes, sir.

Q. And he went into considerable detail about the financing and the figures involving that transaction? A. Yes, sir.

Q. And it was after that conversation that Mr. Hancock came in, is that right? A. Yes, sir.

Q. And then that subject was continued with Mr. Hancock in a person—face-to-face conversation, is that correct? A. Yes, sir.

Q. Does this refresh your recollection with respect to approximately how long this whole conversation or con-

versations in which Baker was involved lasted?
491 A. I don't have the exact times.

Q. Well, was it over an hour, two hours or was it a matter of only thirty minutes or so? A. I would say it was approximately an hour.

Q. Approximately. Were you there alone at that time?
A. Yes, sir.

Q. And did you put that on tape? A. Yes, sir.

Q. Has that tape been preserved or has it been erased?
A. Has been—not erased—when the tape was complete we used them over.

Q. Over again? A. Then they would erase themselves.

Q. Directing your attention, Mr. Giovannetti, to page 17, you heard Mr. Baker speak on that occasion, too, is that correct? A. On the 18th?

Q. Page 17, on the 18th of April. A. Well, I have it. If I recall, Mr. Black spoke to "Bobby".

Q. Yes. A. And I am not sure that that is Bobby Baker.

Q. Was that on the telephone or was that in the
492 in the room? A. It was on the telephone.

Q. On that occasion they spoke regarding Mr. Atwood and Mr. Keer, is that correct? A. Yes, sir.

Q. Then, there was a further call to Las Vegas and a discussion about Santa Domingo, and some business in Santa Domingo, the Dominican Republic, is that correct?
A. Yes.

Q. Now, during the time that you were monitoring the conversations that took place in that room, Mr. Giovannetti, can you tell us from your independent recollection or from your review of the logs approximately how many, what percentage of the time you used to identify the speaker, the term "unidentified male"? A. Very few.

Q. Did you use the term "unknown male"—"unknown person"? A. "Unidentified" normally.

Q. Unidentified? A. Unidentified.

Q. Approximately how often would you put that in?
A. Very few.

Q. What would you say the percentage was? A. I wouldn't be able to guess the percentage.

493 Q. During this period, Mr. Giovannetti, that you
were on this surveillance, did you have conversations
with either your superiors or your fellow agents
494 regarding the information that you were gleaning
as the result of the surveillance? A. No, sir.

Q. Never discussed it? A. No, sir.

Q. Is it fair to say that all you did with respect to the surveillance was to listen, write logs in longhand and turn them over to Mr. Pennypacker? A. That is fair.

Q. Is that completely accurate? A. Yes, sir.

Q. Did the agents who worked on this particular surveillance with you, Mr. Giovannetti, work the same kind of hours as you did? In other words, a four to four shift? A. Yes, sir.

Q. Is that the way it was done, the man would come on at four and stay to the next day at four? A. Yes, sir.

Q. So that actually how many days of the 77 days in which the device was operative would you say that you conducted surveillance? A. I'd say about 35 to 40 days, sir.

Q. In other words, you did it about 35 days? A. Yes, sir.

495 Q. There were 1, 2, 3, 4, 5 other agents monitoring, is that correct? A. Yes.

Q. And they, of course, then, all did it a fewer number of days than you? A. Well, some did. I think I had the—I monitored the most number of days but the other ones had a similar amount except the last two, Mr. Shores, or Agent Shores, and Agent Shackleford and I think they would just fill in if something came about.

Q. While you were there during the 24-hour period, Mr. Giovannetti, would you take your meals in the room? A. No, sir.

Q. Would you leave and go get your meals? A. No, sir.

Q. You would take no meals? A. No meals.

Q. No meals for 24 hours? A. No, we had in the morning, the following morning, if we determined that there was no one, or if I determined there was no one in Mr. Black's suite, the maid would come in and clean up our room, at which time I would go and have breakfast.

496 Q. That would only be if there was no one occupying 438 and 440? A. Yes, sir.

Q. Would you leave your equipment there present? A. No, sir.

Q. You would take your equipment with you? A. Yes, sir.

Q. And that would be the only occasion in which you would leave the room? A. Yes, sir.

Q. At any time would you get sleep while you were there present, monitoring? A. Not sleep as such. We might. If there didn't seem to be any activity or if there was no activity, I would turn the volume up and just keep the earphones on my head and just sit in the chair.

Q. And doze a little bit? A. Probably doze a little.

Q. Doze off a little with the volume up? A. With the volume up.

Q. So that you would be sure to be awakened in the event there was any noise in the room, is that correct? A. Yes, sir.

497 Q. Now, Mr. Giovannetti, other than—I will call your attention, first of all, to March 8, 1963, and I want to ask you a question about that particular day. Did you prepare all the notes on that day that appear on Defendant's No. 1 for identification? A. On 3/8/63, yes, sir.

Q. You did? A. Yes, sir.

Q. You prepared them all? A. Yes, sir.

Q. Was Mr. Branch Wood with you there that day? A. No, sir.

There was no one with us when we were working.

Q. Can you explain, Mr. Giovannetti—I will ask you if you can—all the pencilled notes on this paper I am showing you were put there by me. Mr. Giovannetti? A. Yes, sir.

Q. But the typewritten list is a list handed to me by

Government counsel and I don't know whether this will refresh your recollection or whether it is inaccurate but beside Mr. Giovannetti on March 8, 1963 is the word "partial" and beside Mr. Branch Wood on March 8, 1963

is the word "partial". Does that have any significance to you? A. Well, if someone had maybe an emergency or some type of appointment we worked it out where the relief agent would come in and break up the normal 24-hour shift.

Q. Did that happen on March 8, do you have any recollection of that? A. I don't have any recollection of that, no.

Q. As far as you recall, you did the whole job on March 8? A. I know I did, sir.

Q. You know you did? A. Yes, sir.

Q. And you know it from having reviewed the logs, a copy of which are before you? A. Yes, sir.

Q. That is right? A. A transcription here is before me not the log.

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499 Whereupon,

H. Branch Wood

a witness called for examination by counsel for defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williams:

Q. Will you state your full name, please, Mr. Wood? A. H. Branch Wood.

Q. Where do you live, Mr. Wood? A. 4338 Clagget Road, University Park, Maryland.

Q. How long have you lived there, sir? A. Approximately 5 years.

Q. What is your occupation, Mr. Wood? A. I am a Special Agent of the Federal Bureau of Investigation.

Q. How long have you been a Special Agent, Mr. Wood?
A. 24 years.

Q. And how long have you been assigned in Washington?
A. Approximately five years.

Q. You are in the Washington Field Office? A. Washington Field Office, yes, sir.

Q. Directing your attention, Mr. Wood, to the year, 1963, did there come a time when you were assigned to a case involving investigation of one Fred Black? A. Yes, sir.

Q. And do you recall, Mr. Wood, when that was? A. It was in February and March of 1963.

Q. Well, I am asking you now, please, if you can to pinpoint your initial assignment to that case. A. My first assignment was February 14, 1963.

Q. February 14? A. February 14.

Q. And were your duties pertaining to a microphone surveillance in the Carlton Hotel? A. Yes, sir.

Q. And you had not been assigned this particular case prior to that time? A. No. —No.

Q. Who was it that gave you this assignment, Mr. Wood?
A. Mr. Pennypacker gave me my instructions.

Q. Mr. Pennypacker was the Agent in charge of this particular investigation? A. Yes, sir.

Q. Now, did there come a time when you participated in the microphone surveillance of the Suite known as 438 and 440 at the Carlton Hotel? A. Yes, sir.

Q. Did you actually spend time in the Carlton Hotel? A. Yes, sir.

Q. Can you tell us the first day when you were there?
A. On the day of that first log?

Q. February 14? A. February, yes, sir.

Q. Your recollection is refreshed by the fact that that is the first day on which you made logs, is that right?
A. Yes, sir.

Q. What time did you go to work, Mr. Wood? A. I didn't understand the question.

Q. What was your tour of duty? In other words, did you work in the daytime or at night time or did you work a 24-hour shift? A. Sometimes it was 24-hours; sometimes not. It wasn't an established shift of any given length regularly. Usually 24 hours.

Q. Usually, would it be from four in the afternoon until four the next afternoon? A. Yes, sir.

Q. Mr. Wood, from your independent recollection or from your past recollection recorded as contained in your logs how many days would you say that you spent on the 502 surveillance of that suite? A. Well, I was there about 7 weeks approximately 3 times a week, which would be, I would estimate 20 times.

Q. About 20 times? A. Yes, sir.

Q. Would you generally relieve Mr. Giovannetti? A. Often, I would. Sometimes I'd relieve Mr. King.

Q. Mr. King or Mr. Sloan? A. No, I don't believe I ever relieved Mr. Sloan.

Q. Mr. Shores or Mr. Shackelford? A. Yes.

Q. When you began the surveillance were you given any instructions by Mr. Pennypacker or by any other Agent with respect to what you were to do and with respect to any particular person relating to Mr. Black? A. Yes, Mr. Pennypacker told me that he wanted me to monitor the microphone and record all conversations that I heard at Mr., from Mr. Black's room, to identify his contacts there.

Q. Whenever you heard any voices emanating from that suit would you turn on the recording machine? A. Yes.

Q. In other words, you recorded all the sounds in there? A. With exception of the maid after a couple of days we realized who that was, and she wasn't a contact of 503 Mr. Black's; we didn't record that.

Q. You didn't record the maids but you recorded everyone else that went in there, is that correct? A. Yes, sir.

Q. Now, during the whole period that you worked on this particular microphone surveillance work from room 436?

A. No, we moved to Room 432, I believe it was.

Q. When did you move, Mr. Wood? A. I don't recall the exact date; it was after not too long a period of time.

Q. Was there a reason for your moving to 432? A. I don't know of my own personal knowledge of any reason. I am sure there was.

Q. Well, did 432 afford a better place from which to listen? A. It was one room rather than a suite.

Q. So you went from a suite to one room, is that correct? A. Yes.

Q. So, was the move to effect an economy, is that the reason you are suggesting? A. That is the reason I am suggesting but I don't believe I was told that.

504 Q. Was 432 across the hall from 438 and 440? A. No. From 438? Is that what you are asking?

Q. I asked you whether 432 was across the hall? A. From what?

Q. From the room that you were monitoring. A. I don't think I would call it across the hall. It was "L" shaped and it was on one leg of the "L", the other was on the other leg.

Q. Were you able to hear, Mr. Wood, with the device that you were using all the conversations that took place in Mr. Black's suite? A. To the best of my knowledge we were. Yes.

Q. Were you able to hear conversations in the bedroom as well as the living room? A. Well, I had no way of knowing where they were coming from.

Q. Well— A. Some seemed more distant than others.

Q. Well, were there times when you could hear one end of a phone conversation being made? A. Yes.

Q. Were there times when you could hear two people talking on the telephone? A. No.

505 Q. In different conversations? In other words, someone using a bedroom phone and someone using a living room phone? A. No.

Q. You never had that? A. I never had that, I don't—

Q. Was there ever a time that you were aware that you

were listening to someone talking on a bedroom phone?

A. I wasn't aware there was a bedroom phone.

Q. Now, Mr. Wood, directing your attention specifically to March 8 of 1963, if you will turn that exhibit before you over to page 6, I am going to ask you if you were working on that day? A. Yes.

Q. When did you go to work that day, if you know?

A. At 4 o'clock, I am sure.

Q. 4 o'clock? A. Yes.

Q. And did you work through until the next day at 4 o'clock? A. Yes.

Q. And did you transcribe the events that are recorded here at page 6, 7, 8 and 9? A. No. Mine starts in the middle of page 8.

Q. Page 8. And will you tell us where it starts?

506 A. A woman's voice in the room talking to man.

Q. Prior to that time who had been transcribing?

A. I don't recall. I didn't make a—I can make a guess.

Q. Well, in other words, is it your recollection, Mr. Wood, that what took place on March 8, 1963 that appears before the middle of page 8 just designated by you— A. Yes.

Q. Took place before 4 o'clock in the afternoon? A. That is the best of my recollection.

Q. Then you came on at 4 o'clock in the afternoon and continued to monitor what was taking place? A. That is right.

Q. Does it help your recollection if I suggest to you it was Mr. Giovannetti who was there beforehand? A. I can't recall honestly.

Q. When you came in and picked up this particular series of conversations, did you have any conversation with the Agent who was there when you got there? A. I presume I did but I can't recall.

Q. About what he was listening to? A. I can't recall.

507 Q. You can't recall who it was? A. That is right.

Q. Was your recollection refreshed when you reviewed the motion preparatory to testifying here? A. Yes.

Q. What is your recollection as refreshed by reviewing the logs? A. As to who I talked to?

Q. As to who preceded you. A. I am sorry. I thought you meant as to the conversations here—I just looked at my conversation; I didn't look at the previous conversations to see who did record it.

Q. Now, do you remember, Mr. Wood, what time Mr. Baker left that suite on the 8th of March? A. I don't recall the exact time. He wasn't there but a short time.

Q. When you say a short time, would you say a couple of hours? A. No. Not—not that long.

Q. I direct your attention to page 9, and specifically I direct your attention to the phone call that Mr. Baker made, and you indicated it was to a Mr. Warren Barker and you put after Barker "(phonetic)"—do you have any recollection of that? A. Yes.

508 Q. Then you went and looked in the telephone book to see whether there was a Warren Barker listed in the District of Columbia, is that right? A. Yes.

Q. And you found that there was a Warren Barker at 3633 Yuma Street, right? A. Yes.

Q. And you put that in your report? A. In the Log, yes.

Q. Was that because you had instructions to find out to whom Mr. Baker was talking from that suite? A. No. It seemed a logical thing to do, to identify all persons that had contacts in that suite.

Q. Did you ever on your own undertake to determine whether Mr. Barker was the person to whom Mr. Baker talked on that occasion? A. No.

Q. Did you write down Warren Barker because you couldn't hear the name distinctly? A. No, I heard the name distinctly. Of course, I couldn't tell the spelling. I only heard it phonetically; he didn't spell it.

Q. But it was distinctly Warren Barker? A. Yes.

509 Q. And that is the way you wrote it? A. That is right.

Q. And it was a local telephone call? A. Yes.

Q. And is the same thing true, Mr. Wood, with respect to the telephone call made to ADams 4-8550, on page 8?

A. I don't understand your question. What is what true?

Q. Is it true that you heard Mr. Baker make a phone call to a person named Sullivan at ADams 4-8550? A. That is true.

Q. And then you went to the phone book to find out who that Sullivan was, didn't you? A. Yes.

Q. Well, every time that you heard Mr. Baker make a phone call, did you attempt to find out the identity of the person to whom he was talking? A. Well, these are the only two phone calls that I know of. These are the only two phone calls of Mr. Baker that I monitored.

Q. Well, didn't you monitor a phone call on March 14? A. None by Mr. Baker, no.

Q. By Mr. Black, is that correct? A. Yes.

Q. But each of the phone calls that you monitored, which Mr. Baker was a party, you undertook to
510 ascertain the name of the person to whom he was talking, and the persons address, is that correct?
A. If I could, yes.

Q. In each case, you did? A. Yes.

Q. Was that pursuant to your instructions? A. I didn't have any instructions that detailed, not. It seemed the logical thing to do.

Q. Did you know who Mr. Baker was at this time? A. I knew of his position. That is all.

Q. You knew what his position was? A. Yes.

Q. Did you indicate what his position was when you made up your logs? A. No.

Q. Did you discuss with Mr. Pennypacker Mr. Baker's position when you discussed the case with him? A. No, I don't recall even discussing this particular March 8 with Mr. Pennypacker.

Q. Did you discuss at any time with your superiors, Mr. Wood, or your co-workers on this matter, Mr. Baker's being part of this surveillance, that his voice was

511 picked up in this suite? A. Not that I recall, no, sir.

Q. You don't recall? A. I could have, but I don't recall.

Mr. Williams: I think that is all.

The Court: Mr. Bittman?

Cross Examination

By Mr. Bittman:

Q. You were informed by Mr. Pennypacker this was an investigation of Fred Black, were you not? A. Yes.

Q. Did he inform you that there was any investigation against Bobby Baker? A. No.

Q. And you were specifically told to attempt to find out who Mr. Black's associates were, were you not? A. That is right, yes, sir.

Q. Now, pursuant to my instructions, sir, did you examine all of the Black logs including those conversations which you monitored to attempt to find out if there were any other conversations in which it would appear even remotely where Baker was present or a participant?

A. Yes.

512 Q. Pursuant to my instructions, did you do that?

A. Yes.

Q. Are there any other conversations that are in that category other than that Defendant's Exhibit which is before you which you have previously examined? A. No, sir.

Mr. Bittman: No further questions.

Mr. Williams: I have one question, Your Honor.

Redirect Examination

By Mr. Williams:

Q. Is it a fact Mr. Wood, that you heard Mr. Baker talking in this suite at times when Mr. Black was not present? A. On 3/8 Mr. Black was not present. On the 14th he was.

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EXCERPTS FROM TRANSCRIPT OF NOVEMBER 18, 1966

515 Whereupon

Phillip M. King

was called as a witness by the defendant, and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Williams:

Q. Would you state your full name, please, Mr. King?

A. Phillip M. King.

Q. Where do you reside, sir? A. Annandale, Virginia.

Q. How long have you resided in the Metropolitan area?

A. Approximately four and a half years.

Q. What is your present occupation? A. Special Agent, FBI.

Q. How long have you been so employed? A. A little over 15 years.

Q. Directing your attention, Mr. King, to a period in 1963, were you at that time assigned to the Washington Field Office? A. I was.

516 Q. Specifically, were you assigned to an investigation of one Fred Black? A. Part of that time.

Q. Can you tell us to the best of your ability when you received that assignment? A. Approximately the first of February.

Q. From whom did you receive that assignment? A. Mr. Pennypacker.

Q. Were you instructed that you were to participate as a monitor in a microphone surveillance of a suite at the Carlton Hotel? A. I was.

Q. Was that suite 438 and 440? A. It was.

Q. It was the suite of Fred Black, is that correct? A. Yes, sir.

Q. Now, when did you first participate in those duties? A. To the best of my recollection, it would have been February 8, 9th and 10th.

Q. You say that it was in that area of February 8, 9th and 10th? A. Yes, sir.

Q. Approximately how many days did you put in
517 on that particular assignment? A. I would say 40 or more.

Q. Forty or more days? A. Yes, sir.

Q. You were working on this with Mr. Giovanetti, is that correct? A. Correct.

Q. And Mr. Wood, Branch Wood? A. Yes, sir.

Q. And Mr. Sloan? A. Yes, sir.

Q. And Mr. Shackelford and Mr. Shores? A. Yes, sir.

Q. Now, when you worked on this assignment, Mr. King, did you work alone or was there another agent there accompanying you while you monitored the conversations in 438 and 440? A. No, I worked alone.

Q. And can you tell the Court, please, what hours you worked? A. I think normally the shift was four p.m. to four p.m. the following day.

Q. In other words, you worked a 24-hour shift and
518 then you had a day off, is that correct? A. Yes, sir.

Q. And then after having 24 hours off you would come back and work another 24-hour shift, is that the way it worked? A. Yes, sir.

Q. Now, directing your attention, Mr. King, to defendant's No. 1, I am going to ask you if you were present in the Carlton Hotel monitoring the conversations in Mr. Black's suite on February 11? A. Yes, sir.

Q. Now, when you monitored these conversations, Mr. King, did you have a tape recorder so that you could tape the conversations that you overheard? A. We did.

Q. And did you tape all the conversations other than those that could be described as trivial? A. Yes, sir.

Q. Simultaneously with taping those conversations, did you make longhand entries on sheets of paper that you had in your possession? A. I did.

Q. And did you turn both the sheets of paper on which you had made your longhand entries and the tapes
519 over to Mr. Pennypacker? A. Not always.

Q. Not always? A. No.

Q. Well, did you turn the tapes and the longhand entries over to some other agent when you completed your particular duty for a given 24-hour period? A. I turned the notes over, the longhand notes.

Q. What did you do with the tape? A. Reran it.

Q. You reran it? A. Yes, sir.

Q. Listened to it? A. No. We used the tape over and over again.

Q. Well, were the conversations that were put on tape reduced to writing? A. Yes, sir.

Q. They were reduced to writing? A. Yes, sir.

Q. Were they reduced to writing in verbatim form? A. Yes, sir.

Q. Did you do that? A. I did.

520 Q. You did it in each instance? A. Yes, sir.

Q. In those cases where you monitored the conversation, is that right? A. Yes, sir.

Q. Now, let me direct your attention, if I may, to defendant's No. 1, to page 1, and specifically to the date 2-11-63.

Now there are some notes with respect to conversations that took place in Mr. Black's suite, is that correct? A. Yes, sir.

Q. Were those notes made in longhand simultaneously with your hearing of those conversations? A. Yes, sir.

Q. Now, were there also tapes made of those conversations? A. Yes, sir.

Q. Well, were those conversations reduced to writing as a result of replaying the tapes? A. Yes, sir.

Q. And where are those conversations that were reduced to writing as the result of replaying the tapes? A. It continues.

Q. Well, now, let's take an example if we may, Mr. King.

521 Look at the second paragraph under February 11, 1963, beginning with the word talks, "Talks to Baker." Look at the words that follow that.

Is that a verbatim record of conversation that took place there? A. Yes, sir.

Q. All right.

Now look at the conversation that follows that, that runs from page 1 down to page 2, about one-third of the way.

Is that a verbatim conversation? A. Yes, sir.

Q. Could you tell us either as the result of your independent recollection or as the result of your review of whatever records you reviewed approximately how long the materials which are recorded here under February 11, 1963, and appear at page one, two, three and four—how long a period of time was involved in listening to all of that conversation? A. I could only give you a guess, sir.

Q. Give me your best estimate, please. A. I would say approximately three to four hours.

Q. Three or four hours.

522 Can you tell us as a result of your independent recollection or as the result of your review of your records when the conversations begin which are referred to under February 11?

I mean by that, what time of day. A. I can't give you that on my recalling it, no, sir.

Q. Well, now does it help you, Mr. King, to see on the second line there, "Indicates Baker coming at 6:30 & Black & Baker going out to Black's house for dinner"?

Does that help you with respect to fixing the point of time? A. Yes, it indicates that sometime prior to 6:30 this started.

Q. And it would also be sometime after four o'clock, would it not, because four o'clock was the time at which you reported for duty? A. Yes, sir.

Q. So at least it helps you to fix it between four and 6:30, is that right? A. Yes, sir.

Q. And now is it your testimony, Mr. King, that the conversations which are here on page one, two, three and four, are verbatim conversations that took place
523 during those hours? A. Yes, sir.

Q. Now, let's turn our attention to March 4, 1963. Were you on duty that day, sir? A. I was.

Q. And is it your best recollection that you reported to duty at the same time approximately four o'clock? A. Yes, sir.

Q. Now, at the time that you reported for duty on that day, was Mr. Baker in the suite? A. I don't know, sir.

Q. Was there a man whom you identified as Mr. Baker in the suite? A. As the first line says: Unknown man named Bob possibly Baker.

Q. What was it that caused you to conjecture that it was Mr. Baker? A. From my recollection of it, I heard the name Bob. As the conversation continued I realized it was not Baker.

Q. It was not Baker? A. Yes, sir.

Q. What was it that made you realize it was not Baker? A. Well, by then I had understood the sound of his voice.

Q. You understood the sound of his voice?
524 A. I recognized it, sir.

Q. From what did you recognize the sound of his voice? A. From the previous conversation on 2-11?

Q. In other words on 2-11 you became familiar with Mr. Baker's voice, is that right? A. Yes, sir.

Q. So that on March 4, you were able to identify it? A. On March 4 I was able to conclude it was not him.

Q. Well, when was it that you concluded that it was not Mr. Baker there on March 4? A. During the conversation and at the end I believe the man's name was mentioned as possibly Bob Miller.

Q. Did you, Mr. King, at any time, have discussion with Mr. Pennypacker or any of your superiors at the Federal Bureau of Investigation or any other agents of the Federal Bureau of Investigation with respect to Mr. Bobby Baker? A. At any?

Q. Yes. And his presence in Mr. Black's suite? A. You will have to rephrase that. You gave me two.

Q. Did you have any conversations with other agents of the FBI during this period that you were monitoring

Mr. Black's suite with respect to Mr. Bobby Baker
525 and his presence in that suite? A. Other than to
have them listen.

Q. Well, would you elaborate a little on that answer,
please? A. I would say that Baker was here, if it happened
on that day.

Q. And they would then listen? A. If they wanted to.

Q. She doesn't get the nod of your head, Mr. King. A.
If they desired to listen they could.

Q. Had you had any conversation with Mr. Pennypacker
about noting carefully Mr. Baker's presence? A. No, not
particularly Mr. Baker, no.

Q. Well, had Mr. Baker been included in any list of
persons whom you were told frequented Mr. Black's apart-
ment or suite at the Carlton? A. Not exactly the way you
asked that.

Q. Well, would you say it the way it was. A. We were
given his name at the beginning of the Black investigation
as an associate of Black's.

Q. When you were given his name, what if any instruc-
tions or information was given to you? A. Well—

526 Q. With respect to him. A. Merely to listen for
him.

Q. Listen for him? A. As an associate.

Q. As an associate of Mr. Black's, is that correct? A.
Yes, sir.

Q. Who gave you those instructions? A. Mr. Penny-
packer.

Q. He is the agent in charge of this investigation, is that
correct? A. Yes, sir.

Q. Now, do the conversations of March 4 as reported
here on defendant's Number 1 purport to be verbatim?
A. I beg your pardon.

Q. Do they purport to be verbatim? A. They were as I
wrote them down, yes, sir.

Q. Now, I notice that the middle of page five you have
excerpts, the word excerpts. A. I note it, too.

Q. What does that suggest? A. That suggests to me that I played back some of the tape and picked these words up.

Q. Does it suggest that the full conversation is
527 not there? A. Sir, I would like to direct your attention to the top of page five, the third line, where I noted in my log: "Missing most of conversation because of Suite 436."

Q. Would you explain that to us? A. Someone apparently was occupying that suite and their conversation conflicted so I was unable to—

Q. Were you listening—could you hear what was happening in 436, too? A. I could.

Q. Sir? A. I could.

Q. This was not Mr. Black's suite, was it? A. No, sir.

Q. You were listening from 432, is that right? A. Yes, sir.

Q. 436 was a different suite, is that correct? A. Correct.

Q. Now during the time that you were listening from 432 were you able to hear both the conversations in the suite designated as 436 and Mr. Black's suite? A. Yes, sir.

Q. Did you know who was occupying Suite 436? A. Normally it was vacant.

528 Q. It was normally vacant? A. Yes, sir.

Q. But on this occasion it was occupied? A. Yes, sir.

Q. Now, this is the suite, is it not, Mr. King, which you used—by you, I mean you and your colleagues in the FBI used as a monitoring base at one point? A. Are you referring to 436?

Q. Yes. A. Yes, sir.

Q. Now, beginning on February 7, you used 436 as your monitoring base, didn't you? A. Yes, sir.

Q. When was it that you removed yourself from 436 and went over to 432? A. I can't give you an exact date.

Q. Well, could you give us an approximation and maybe it will help you to estimate for us how long you stayed in the suite as distinguished from the single room which

was 432? A. I would guess we moved into 432 on February the 10th.

Q. That would be approximately three days after
529 the surveillance began? A. I am saying approximately.

Q. All the rest of the time you were able to hear the conversations both in 438 and 440 and 436 when 436 was occupied? A. When it was occupied, yes, sir.

Q. Were you able to hear conversations in any other rooms when they were occupied, and by other, I mean other than 438, 440, or 436? A. 434 is a part of the suite of 436.

Q. So you could hear 434, 436, 438 and 440, is that right?
A. Yes, sir.

Q. In addition to 434, 436, 438 and 440 were you able to hear from your monitoring post in 432 any other conversations in other rooms? A. No, sir.

Q. Now, turning your attention, Mr. King, to April 15, and I think you will find that at page 17 of the exhibit which I handed to you.

Were you working on that day? A. I was.

Q. And on that day did you hear a conversation
530 in 438 and 440? A. I did.

Q. On that date did you hear Mr. Baker? A. I did.

Q. And he was talking from 438 and 440? A. Yes, sir.

Q. Now, do the conversations which appear at page 17 under the date 4-15-63, down to 4-18-63, reflect verbatim the conversations that you heard emanating from that suite? A. Yes, sir.

Q. When was it, Mr. King, that you terminated your assignment with respect to this microphone surveillance?
A. I can't recall the date, sir.

Q. In reviewing your logs, did it refresh your recollection with respect to that subject? A. I can give you an approximate date.

Q. Would you give us that, please? A. The latter part of April.

Q. Now, during the time that you were monitoring that suite of Mr. Black's, were there occasions when you were unable to identify the conversants, persons engaged in conversations? A. You mean as to name or male or female?

Q. Just as to name.

You could always identify a male voice from a
531 female voice I assume, is that right? A. Yes, sir.

Q. Were there times when you were not able to identify by name the person talking? A. One occasion.

Q. Only one occasion? A. (Nods affirmatively.)

Q. Not the whole 40 days? A. Yes, sir.

Q. When was that, sir? A. I can't give you the date of that either.

Q. Well, in other words, on every occasion which you monitored the Black suite, and that was a period of 40 days, you were able to identify the party talking? A. Yes, sir.

Q. Is that correct? A. With one exception unless it was a female.

Q. Unless it was a female.

In other words, you were able to identify the males, but you weren't able to identify the females, so when you say with one exception, you are talking about one male exception, is that correct? A. Correct.

532 Q. Were you able to identify, Mr. King, the person on the other end of the telephone conversation which was made from the suite 438 and 440 on each occasion when you heard one side of such a conversation? A. I think you better repeat that, sir. I am not quite sure which way you mean.

Q. Well, you heard people talking on the phone from that suite, didn't you? A. Yes, sir.

Q. When you heard people talking on the phone from that suite, were you on every occasion able to determine to whom they were talking? A. Yes, sir.

Q. You were? A. Yes, sir.

Q. How were you able to make that determination? A. On the occasions they would refer to a name.

Q. What was your means of making identification of the party on the other end of the telephone conversation when it was an incoming call? A. Well, the speaker that I listened to would refer to the party by name.

533 Q. Always did that? A. Pardon me?

Q. That happened every time you heard a phone conversation, is that right? A. I believe so, yes, sir.

Q. Did you always get the full name or did you simply get the appellation by which the person addressed the man or woman on the other end of the phone conversation? A. The appellation.

Q. Now, did you aid your surveillance of 438 and 440, Mr. King, by visual surveillance?

In other words, did you attempt to see who went in and who left that suite? A. On occasion.

Q. Did you ever see Mr. Baker leave or enter that suite? A. I did.

Q. When did you see him leave or enter the suite? A. Well, I don't recall, except the one occasion I think I saw him leave, but I don't recall which occasion it was.

Q. Was that one of the occasions in which you reported— A. It was on one of these three occasions.

Q. Did you know Mr. Baker by sight? A. At that time?

534 Q. Yes. A. Yes, sir.

Q. Where had you become familiar with Mr. Baker? A. I had just seen him on occasion prior to this.

Q. You had seen him prior to the time you began the microphone surveillance? A. Yes, sir.

Q. Had you seen a picture of him? A. No.

Q. Where did you see him? A. Standing out in front of the hotel with Mr. Black.

Q. Was he identified to you at that time as Mr. Baker? A. I don't recall how I identified him at that particular moment. I don't think I did but I identified him later.

Q. Well, was the suite under visual as well as electronic surveillance? A. No.

Q. Was this just an accident? A. This was prior to the electronic surveillance.

Q. Prior to the electronic surveillance.

Was it under visual surveillance prior to the electronic surveillance? A. You said the suite, no, sir.

535 Q. Was Mr. Baker or Mr. Black under visual surveillance prior to this time? A. Mr. Black, not Mr. Baker.

Q. Well, during the visual surveillance of Mr. Black did you become familiar with Mr. Baker's appearance? A. Yes, that one occasion.

Q. Were other agents working on the visual surveillance of Mr. Black? A. No.

Q. Just you? A. Just me.

Q. None of the other monitors were part of the visual surveillance? A. No, sir.

Q. How long were you on that, sir?

Mr. Bittman: Your Honor, I am going to object. I think we are getting well beyond the point of the issues in this case.

The Court: I will sustain that objection.

Mr. Williams: I have no further questions.

The Court: Mr. Bittman.

Cross-Examination

By Mr. Bittman:

536 Q. Mr. King, you stated you were able to identify the voice of Robert G. Baker after you heard that lengthy conversation of February 11, 1963, is that correct? A. Yes, sir.

Q. You further testified that as a result of your being able to identify his voice that at the conclusion of the conversation of March 4 you determined that it was not Robert Baker, is that correct? A. That is correct, sir.

Q. Why was that conversation made part of this defense exhibit, sir? A. Well, in reviewing the logs to help refresh my recollection, I was instructed to review all matters where

Mr. Baker was present or referred to in a conversation as a principal or any possibility where he might have been but it was not definitely stated.

Q. Because of the fact that early in this conversation of March 4 his name was mentioned as being a participant, even though later you determined he was not, we turned it over, is that correct? A. Yes, sir.

Q. Now, subsequent to February 11, how many occasions did you monitor conversations which emanated
537 from the Fred Black suite, approximately? A. Well, I monitored more than 40 times.

Q. And the surveillance began on February 8, 1963? A. Yes, sir.

Q. So subsequent to February 11, 1963, to the best of your recollection how many conversations would you have monitored from that suite? A. I would say approximately 16 or 17.

Q. Well— A. You mean—

Q. Excuse me. I withdraw that question.

How many days were you monitoring any sounds which might emanate from that suite subsequent to February 11? A. Forty.

Q. And of those 40 days you only recognized Baker's voice on two occasions, is that correct? A. Yes, sir.

Q. Is your testimony here based on your best recollection or only your review of those logs? A. It is based on both, my recollection and the refreshing of it by reviewing the logs.

* * * * *

538 Whereupon

William B. Sloan

was called as a witness by the defendant and having been duly sworn was examined and testified as follows:

Direct Examination

By Mr. Williams:

Q. Will you state your full name, please, Mr. Sloan?

A. William B. Sloan.

Q. Where do you live, sir? A. 7515 Arbroath Drive, Clinton, Maryland.

Q. How long have you lived there? A. Since January of 1963.

Q. What is your occupation, Mr. Sloan? A. Special Agent, Federal Bureau of Investigation.

Q. How long have you been so occupied? A. Since April of 1951.

Q. How long have you been assigned to the Washington area? A. Since October of 1962.

Q. That was approximately three months before you moved into your present residence? A. Yes, sir.

Q. Now, directing your attention, Mr. Sloan, to the year 1963, in connection with your duties as a Special Agent of the Federal Bureau of Investigation, were you assigned to the Fred Black case? A. Yes, sir.

Q. When did that assignment take place, Mr. Sloan? A. March 29, 1963.

Q. March 29 of '63? A. Yes, sir.

Q. How are you able to fix that date, if you can tell us? A. By my review of certain logs that I prepared.

Q. Yes, sir.

Now, how long were you assigned to this matter, Mr. Sloan? A. Well, the date I just stated until April 24 of 1963.

Q. Now during that time did you act as a monitor on a microphone surveillance of Mr. Black's suite at the Carlton Hotel? A. Yes, sir.

Q. Approximately how many days did you monitor on the microphone surveillance of his suite? A. Approximately 15.

Q. What were your hours when you worked on this detail? A. I went on duty at four p.m. one day and continued until the same hour the next day.

Q. Now what was the base from which you conducted this microphone surveillance? A. It was a room in the hotel.

Q. Was that room 432? A. As best I recall, yes, sir.

Q. That was a single room, was it? A. Yes, sir.

Q. Did anyone work with you while you were monitoring the conversations in Mr. Black's suite? A. No, sir, not simultaneously.

Q. In other words, you would be in room 432 alone from four p.m. one day to four p.m. the next day, is that correct? A. Yes, sir.

Q. You stayed there continuously for 24 hours? A. Yes, sir.

541 Q. Now, while you were monitoring 438 and 440, were you also able to hear 434 and 436? A. Yes, sir.

Q. Were you able to hear from that post in 432 any rooms other than 434, 436, 438, and 440? A. Not to my knowledge.

Q. Who was it who gave you your assignment in this matter? A. Special Agent Edward Pennypacker.

Q. Now at the time you were given the assignment in this matter, were any instructions given to you? A. Yes, sir.

Q. What were those instructions? A. Instructions were to monitor all conversations that emanated over the installation.

Q. Would you tell us how you did that? Did you have a tape recorder? A. Yes, sir.

Q. Did you record all conversations on that tape recorder? A. Yes, sir.

Q. Did you simultaneously make notes on some
542 piece of paper as you recorded? A. Yes, sir.

Q. Did you thereafter play back the recording? A. Yes, sir.

Q. Did you reduce the conversations that you heard to verbatim form? A. Not verbatim.

Q. What? A. Not verbatim.

Q. Well, what did you do, Mr. Sloan, with respect to the use that you made of the tape recordings? A. I prepared a log, showing the conversation, the context of the conversation in general, not all, not all in verbatim.

Q. When you were given your instructions on this assignment, was any mention made to you of Mr. Robert Baker? A. No, sir.

Q. Did you know who Mr. Robert Baker was when you began your assignment in this case? A. No, sir.

Q. Was any mention at all made during your surveillance of the Black suite of Mr. Baker? A. I don't understand the question.

Q. Well, during the period that you had the Black 542-A suite under microphone surveillance which I understand was a period of some 15 days which began March 19 was it? A. 29th.

Q. 29th and April 24? A. Yes, sir.

Q. During those 15 days did you have any conversations with respect to Robert Baker and his relationship to Black and to your surveillance? A. No, sir.

Q. At no time? A. (Shook head negatively.)

Q. Did you know who Mr. Baker was at that time? A. No, sir.

Q. Had you ever heard Mr. Baker's voice before— A. No, sir.

Q. —the 29th of March? A. No, sir.

Q. Did you receive any information with respect to a visual surveillance of Mr. Black? A. No, sir.

Q. Did you participate in any visual surveillance during this period? A. No, sir.

542-B Q. When you were doing the microphone surveillance did you, as part of your investigative technique, undertake to see who entered and left Mr. Black's suite? A. Possibly once.

Q. Were you able to see the door of 438 or 440 from 432? A. You could if the door was open.

Q. Did you ever seen Mr. Baker go in there? A. No, sir.

Q. Did you see Mr. Baker in the Carlton Hotel during the period that you were working there? A. No, sir.

Q. Would you have recognized him if you saw him? A. No, sir.

Q. Now, directing your attention to April 4 of 1963, were you working on that date? A. Yes, sir.

Q. On that occasion you overheard a phone conversation? A. Yes, sir.

Q. And you identified the party on the other end as Mr. Baker, is that correct? A. No, sir.

Q. Well, it was a phone call to a Robert on Capitol
543 Hill, right? A. Yes, sir.

Q. And it was to an extension 2995, right? A.
Yes, sir.

Q. Did you ascertain that that was Robert Baker's extension on Capitol Hill? A. No, sir.

Q. You did not at that time? A. (Shakes head negatively.)

Q. Now in the conversation which you heard there was discussion of the acquisition of some points in a company, is that right? A. Yes, sir.

Q. And there was a discussion of Mr. Levinson, is that correct? A. Are you referring to that first conversation?

Q. Well, the conversations that you heard on this day.
A. Yes, sir.

Q. Were these conversations that you put in your logs on that day verbatim conversations? A. No, sir.

Q. In fact, there were two calls to Bobby at exten-
544 sion 2995 on that date, were there not? A. Yes, sir.

Q. Can you fix in point of time for us approximately when these conversations of which you made a record took place? A. Between the hours of 5:30 and 6 p.m.

Q. Between 5:30 and 6 p.m.? A. Yes, sir.

Q. Now, were there occasions in the 15 days in which you conducted the surveillance when you could not identify voices emanating from the suite? A. Yes, sir.

Q. Were they male voices? A. Some.

Q. And when you couldn't identify the voices emanating from the suite would you mark down unidentified male or unidentified female? A. Yes, sir.

Q. In reviewing your logs for the purpose of testifying here did you note that you had so logged in certain conversations as conversations of unidentified male and unidentified female? A. Yes, sir.

545 Q. What percentage of the time would that situation obtain, Mr. Sloan? A. Percentage of time?

Q. Yes. A. You say?

It was very little. I can't give a percentage.

Q. Could you help us a little more than by saying very little? A. Very few.

Q. Would it be as high as 25 percent? A. No, sir.

Q. As high as 15 percent? A. Possibly 15 percent.

Q. About 15 percent? A. Possibly.

* * * * *

546 Mr. Williams: * * *

Now, Your Honor, if I may with respect to defendant's No. 4, this consists, Your Honor, of a letter and a subpoena. At the very end of October I had a meeting with Mr. Bittman and he said that he would produce in court such witnesses as were within the control of the Government whom we wanted called for this particular hearing.

In thinking inherent in that understanding was that if he felt that any call that we made for a witness or for records was unreasonable that he would resist it and that we would present that matter to Your Honor.

Subsequently, at the very end of October Mr. Taft presented to Mr. Bittman a list of those persons whom we wanted produced for this hearing.

And I might say to Your Honor, as you will see
547 when you look at defendant's 4, many of the persons whom we asked for were not designated by name by reason of the fact that we did not know the names of the persons so that we identified them by category and occupation.

The Court: Yes.

Mr. Williams: When Mr. Taft handed that list to Mr. Bittman, Mr. Bittman requested that for the purposes of perfecting a record that we give him a subpoena for those persons.

And Mr. Bittman agreed that it would not be necessary for us to serve personally each of those persons by the processes of this court and that he would himself, as counsel in this case, accept service for these people.

Now, we then, Your Honor, reached an understanding which is incorporated in a letter of November 3, 1966.

Mr. Bittman apprised me that he felt that the subpoena and the categories of persons called for was too far-reaching and that he would resist in certain categories.

So we arrived at an understanding that he would produce for us in court those persons whom he believed to be properly within the reach of subpoena and who could offer evidence properly relevant to this hearing.

He has done this, Your Honor. He has produced
548 for us all of the witnesses who have testified in this hearing today, I believe they are 14 in number.

With respect to the others whom we have called, I believe that he will resist, but I will let Mr. Bittman speak for himself on that.

In any event, Your Honor, for purposes of the record at this time, I would like to offer the letter which was handed to Mr. Bittman and the subpoena which was also handed to Mr. Bittman on November 3, 1966.

I might say in offering this for the record, Your Honor, that it may be that the course of prudence is for the Court to examine in somewhat more detail the documents which have been turned over to it before a final ruling is made, and so we are not asking Your Honor finally to rule on this at this point, but I think in the orderly course that we should offer the subpoena at this point.

The Court: All right.

Now do you have any witnesses in mind at this time that you would like particularly to have?

Mr. Williams: Well—

The Court: Does the letter speak for itself?

Mr. Williams: The letter—

The Court: Do you want me to study that?

549 Mr. Williams: The document speaks for itself, Your Honor.

The Court: All right.

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EXCERPTS FROM ARGUMENT—NOVEMBER 21, 1966

556 Mr. Bittman: Your Honor, the last order of business we had Friday, as I recall, Mr. Williams had introduced in evidence a copy of a letter dated November 3, 1966, which was addressed to me and attached is a subpoena requesting certain specified individuals and also requesting different categories of witnesses.

I haven't really attempted to ascertain exactly how many witnesses he wants to have called pursuant to this subpoena but I assume it is somewhere in the nature of 125 additional witnesses.

He has also filed a motion for production of certain documents which are within the files of the Department of Justice, the Internal Revenue Service and the F.B.I.

557 In response to both the subpoena and the request for documentary evidence I'd like to make a short statement to the Court at this time, with the Court's permission.

The Court: Before you make your short statement, Mr. Bittman, the Court would like to inquire of Mr. Williams which additional witnesses he desires to have called.

Mr. Williams: Your honor, I don't know that I have my copy of that subpoena here.

The Court: You may have the one in the file.

Mr. Williams: I have reviewed the persons whom we asked to be called, Your Honor, with a view to seeing whether or not we could waive the presence of any of them.

I don't see in a cursory review of this subpoena that we can waive the presence of any. We don't know as Your Honor knows the identity of many of them because we were able to state only categories.

However, I would like to say to Your Honor that we do rely upon this subpoena and to each specific section of the subpoena so that if Your Honor feels that any of the subpoena calls for witnesses whom we are not entitled to, we would like to have Your Honor rule with respect to specific

portions of the subpoena and allow such other portions as Your Honor feels are valid to remain standing because it was our joint effort here to avoid the unnecessary
 558 issuance of a plethora of subpoenas on a number of witnesses and we have put them all in this one as a matter of convenience.

The Court: Mr. Williams, You have had 14 witnesses from the F.B.I. The Court has heard their testimony. The Court will give you this opportunity of showing the materiality of any additional witnesses of any of the categories that you have named.

Mr. Williams: Yes, sir. Your Honor with respect—

The Court: In short you may have a proffer.

Mr. Williams: Do you wish me to do that, Your Honor, at this point?

The Court: I'd like you to show the materiality first.

Mr. Williams: I might say to Your Honor that I had fully expected you would ask me to do this but I had understood Your Honor was going to continue his review of the materials which had been turned over to him by the Government, before we reached that particular point.

If Your Honor wants me to do it now I will undertake to do it now although, frankly, I did not come here this morning prepared to do that.

The Court: What we are trying to do on this first motion, is to establish causality between the "bugs" or the taps and the matters charged in the indictment. Now, do any of the witnesses that you have not called but you would like to call have testimony that would go to that point?

559 Mr. Williams: Your Honor, the first three who were named here, Mr. Ellis, Mr. Parker and Mr. Lee, each are Agents in Las Vegas. It is our understanding that they were primarily in charge of those microphone surveillances which were conducted in Las Vegas, Nevada, and they I believe are in the best position to inform the Court with respect to the surveillances which were conducted in Las Vegas, and the conversations which were

picked up. We have an affidavit here that Mr. Baker did engage in conversations at the Fremont Hotel, the Dunes Hotel, the Thunderbird, the Sands, and in the Office of Mr. Clifford Jones; and we believe that these witnesses would be able to inform the Court with respect to picking up Baker conversations at these places as well as any other place in the Las Vegas area.

We believe further that it is necessary, if the Court please, to call the monitors who monitored the conversations at the various places there, to ascertain whether or not they picked up conversations of Baker and whether or not they picked up conversations of persons whose voices they were unable to identify and whom they recorded as being "unidentified males" so that we can see that material, and ascertain whether or not that is Baker con-

560 conversations and see what relevancy it has to this case.

Again, of course, we would like Your Honor to have the Agents who made reports concerning Baker to show in what language those reports were phrased and whether or not those reports were based upon electronic surveillance of Baker conversations in that area.

The same in general would be true, Your Honor of the Miami category of witnesses. We would like those persons who monitored the conversations of the Sigelbaum surveillance so that we can ascertain whether or not additional conversations of Baker were picked up and whether or not conversations of unidentified voices were picked up which may have been conversations of Baker which provided leads which ultimately were used in the obtaining of indictment in this case.

It is for the same reason that we want the Agents who made reports on Mr. Baker in Las Vegas, we would like the Agents who made reports with respect to Mr. Baker in Miami.

We feel that the Agent in charge of the Office in Miami is necessary, Your Honor, because of the development of the testimony here that there was a funneling upward of in-

formation; that the investigative clerks reported to the Chief Investigative Clerk and the Chief Investigative Clerk to the Agent in charge of the case. The Agent in Charge of the Case, to his supervisor; and ultimately the reports would be in the custody and possession of the agent in charge of the office and we, of course, want to trace what use of the information was made from that point.

With respect to the Washington surveillance, Your Honor, we would like, if the Court please, all of those persons who were present in the Washington surveillance, those monitors who heard conversations.

I believe that there were six in number and that four of them were produced here. There were two others—I think Mr. Sloan and Mr. Shackelford—were not produced and we again, of course, would like to have those witnesses to ascertain whether or not they picked up Baker conversations and what use was made of those Baker conversations; whether or not they listened to unidentified voices and whether those unidentified voices were Baker's voice at different times; and what use was made of the conversations with respect to those pick-ups.

Again, Your Honor, we would like to know from the Agents at Headquarters who held custody of the material on Baker in order that we can inquire with respect to what use was made of it. We would like to have those Agents who used this material to prepare reports to find out where those reports went.

We would like to have the Agent in charge of supplying electronic equipment because of the fact, Your Honor, that we would like to have an opportunity to compare electronic equipment which we have seen with the electronic equipment which was used in these other places to ascertain whether or not additional electronic equipment is the same, and therefore from the same source as was utilized in the admitted F.B.I. microphone surveillances at the Fremont, at the Carlton Hotel, and in Sigelbaum's office.

We need Mr. Hoover, if the Court please, because of the fact that the representation has been made that the lawyers in this case reviewed such logs and such materials as were turned over to them by Mr. Hoover and they have made representations to the Court predicated upon Mr. Hoover's representation that all of the logs were made available to them. There is no affidavit in the file from Mr. Hoover; there is not even a signed statement attached to the affidavit from Mr. Hoover; and I don't even know whether the initials which appear upon the memorandum attached to Mr. Mittler's affidavit are Mr. Hoover's initials. They don't appear to me, Your Honor, at least from a cursory perfunctory examination that they are. It looks to me like the initials are J. M., but I could be mistaken. Anyway, that is the reason—if the Court please.

We do not concede, and I don't want to by any form of acquiescence here, Your Honor, concede that the
563 Government can discharge its obligation of purifying its case by affidavits; and I a fortiori do not concede they can discharge their obligation of purifying their case by affidavits predicated upon unsworn, unsigned memorandums.

Again, Your Honor, we have asked for those Agents who wrote reports used by agencies of the government; and I think that would encompass simply the Internal Revenue Service and the F.B.I. in preparing this case. In the affidavits which have been filed here it has been recited by counsel for the Government that they did review reports of the agents which had been prepared in this case both at the internal Revenue stage and at the F.B.I. stage.

Finally, we asked, Your Honor, for the agents of the Internal Revenue Service who had been in charge of the Baker tax investigation. They are in this indictment, Your Honor, four years which are germane, but the fact is, Your Honor, there were other years which were under investigation which are not the subject of indictment here but we believe that we are entitled to have the agents

present to testify who did conduct this Internal Revenue Service investigation to ascertain whether they used the materials which were obtained in violation of Mr. Baker's constitutional rights.

I think that is it, Your Honor.

I would like to say this, if I may. I don't know
564 what point Your Honor is at in reviewing materials which were turned over to him, but as we go forward here it is entirely probable that Your Honor will make available to the defense other materials and as those are made available it may be that we will have other reasons to advance to the Court. And, it is for that reason I would respectfully ask Your Honor to withhold ruling on our subpoena, and we will not press for the presence of these persons until such time as Your Honor has finished reading the materials turned over to him and has given to us what you have stated you will give to us in your Order, namely, all materials which you regard as being conversations involving Defendant Baker.

The Court: Well, the Court will certainly notify you as to any additional conversations that do involve the defendant. I might say this, as to unidentified conversations, the Court has encountered some, not many. But by and large they are completely without any relevancy to anything. Purely social conversations, that kind of thing. There are really very few conversations in this whole mass of material that involve Mr. Baker or anything to do with the indictment. Conversations that do involve Mr. Baker are about other matters. I haven't completed by review of all the materials that have been turned over to me. It is quite
a task. When I do complete it, I will notify you con-
565 cerning any additional matter that is relevant.

I will hear from the Government at this time.

Mr. Bittman: I was going to, planned to make a statement in respect to the request for further witnesses and documents, but in view of the fact the Court is reserving its ruling what I can do is formalize a reply to this and make

it a part of the record, and save time so we can argue the other pre-trial motions at this time.

The Court: All right, sir.

In view of the fact the defense has requested that we reserve on the ruling concerning additional witnesses, that go to Motion to Suppress, and the Government has no objection to that, I will withhold a ruling on that at this time, and you may proceed with your other motion.

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**EXCERPTS FROM PRETRIAL CONFERENCE OF
DECEMBER 27, 1966**

40 Mr. Williams: With respect to severance, and I want to represent to you right now, Your Honor, as we approach the trial that there is a sharp difference in our position with respect to the defendant's testifying on the first seven counts and testifying on 8 and 9. I don't want to disclose to the Government at this time what the positions are, except to say that they are different, and I will be glad to tell the Court, in camera, what the positions are.

But I don't think I have to discover to the Government at this point—

Mr. Bittman: I wouldn't ask for it.

Mr. Williams: —but I think, Your Honor, if I may say so, with respect to Your Honor's rulings, that if that election were made after the Government rested, that the damage would be done—the prejudice would be done—from the jury to the defendant, if all the evidence on the counts that had gone before it, we would have needlessly multiplied ours.

41 Mr. Bittman: Your Honor, I am thoroughly confused. We had a pre-trial conference a couple of months ago, as I recall, and Mr. Williams strongly intimated to the Court that Mr. Baker would be embarrassed and confounded if one through seven were tried together. He might well want to take the stand with re-

spect to counts 3 through 7 and now he is saying that now Mr. Baker might not want to testify with respect to counts 8 and 9—

Mr. Williams: I did not say either of those things.

The Court: Now, Mr. Bittman, you must realize that Mr. Williams is very familiar with strategy on the football field and quarterbacks very frequently decide they have gotten an open path down the field—an open receiver down the field—it's not the play that was called—but they've learned strategy according to the way they make their choice, and I think that's Mr. Williams' prerogative.

Mr. Williams: Your Honor, may I say two things in response to what Mr. Bittman has just said.

First of all, when I argued the law, Your Honor, I argued as forcefully as I could, the Drew Case, and I said, Your Honor, that when a man is put to defense in larceny and income tax on the same set of facts, he may well be con-

42 founded in his defense, I did not at any time say to you that—anything about vagary—the Defendant Baker in this case, in this set of facts, because I wouldn't do that in open Court.

But I am saying to you now, not what Mr. Bittman said to you, that the defendant will not take the stand on 8 and 9; I didn't say that, Your Honor. I said that I am representing to you that there is a difference in our position in one through seven and 8 and 9, which is different from what Mr. Bittman said.

Mr. Craighill: If 8 and 9 were severed now, it would still conceivably be a difference as to 3 through 7 and 1 and 2.

Actually 8 and 9 cover different years than 1 through 7.

Mr. Williams: Well, actually the conspiracy count begins in August of 1962, and there's a reason for that beginning date, so there is an overlap.

The Court: What about trying this case on the first seven counts?

Mr. Bittman: Well, Your Honor, I don't think, I just don't think there is any legal basis right now to grant a

severance as to Counts 8 and 9. Let us just go back
 43 for one second, and please bear with me, because I
 have been listening to most of this for the last hour.

First of all, Mr. Williams asked for seven different trials and he limited to three separate trials and the Court in its ruling said we should have one trial, but left the door open for Mr. Williams to bring to the Court's attention, that if the defendant at any time, at the conclusion of the Government's case, be confounded or embarrassed, because of a possible difference in defense, and this was a result of our pre-trial conference that we had, and was also a result of representations that Mr. Williams made in oral arguments before Your Honor.

The inference was that he might have a defense with respect to the larceny, but he could not use that same defense with respect to the tax evasion charge in Count 2. And, so now he is trying to make an effort—and now he says he might also be confounded and embarrassed if Counts 8 and 9 are tried with 1 and 2 and 3 through 7.

So, I believe that he is trying to obtain indirectly what he could not obtain directly by filing all the legal motions, arguing it in detail before Your Honor, and now he says
 44 that because of the fact he was unaware of the two
 conversations which the Government monitored with the consent of one of the parties, that this has jeopardized his rights and now he needs either a continuance, or in the alternative, a severance.

And I honestly say, Your Honor, I just don't follow his reasoning.

He also now interjects for the first time, and says that he would be confounded, I think the word was economically. I don't understand that either. With four or five lawyers representing Mr. Baker every day of the hearing. Mr. Kostelanetz was here; the hearing had nothing to do with Counts 8 and 9 to the best of my knowledge, or at least any more to 8 and 9 than any other motion, or any other count.

Mr. Williams: Mr. Kostelanetz argued on 8 and 9.

Mr. Bittman: He's throwing in everything but the kitchen sink with the hopes that at the eve of the trial he could now get a continuance, or in the alternative, now a severance.

And which it would really follow in three severances, if you follow his logic, or his reasoning in his earlier
45 representation to the Court. Because if we try 1 through 7, then he'll again raise this confounded and embarrassed argument, and say well, now, Your Honor, you have to sever out Counts 3 through 7, because Baker can't testify to those consistently with his defense in Count 2. Well, then we're back to where we were before.

I don't think that if you analyze everything Mr. Williams has said, Your Honor; he has not raised anything new, except for the fact that he has now been brought aware of two conversations whereby the Government can corroborate one of its key witnesses, and this is true in many cases. We have much additional corroboration from Mr. Bromley. But, I don't think he raised any new points. I think legally and the true case is in our favor, I think, that these counts will properly join 1, 2, 8 and 9, without question, because the indictment charges conspiracy between Jones, Bromley and Baker to falsify tax returns between the years 1963 and 1964. I just don't think it would serve any useful purpose.

As Your Honor stated in your opinion, that to now sever this case and have it tried by the Government piecemeal.

The Court: You started twice, Ed. Now, without interruption, go ahead.

Mr. Williams: Your Honor, we lost the motion to
46 sever. We filed a motion to sever; one day sitting here informally you said to me, how do you think this case should be split, and I told you. I said in candor I said I think it should be split and I delineated it and Your Honor wrote it into his opinion that this was our

position, and I am not quarreling with that. You asked a question and I think you are entitled to a candid answer. I thought that it should be split that way, but we lost that battle, and it's over, and I am now saying to Your Honor that since you said in your opinion that the door was open, because obviously Your Honor recognized that circumstances might arise where there should be a severance and I certainly think they maintain in this case.

I say that in addition to the reasons that I have advanced here, which reads that if 8 and 9 are severed we wouldn't have to file a pre-trial motion now on the Bromley episode, we wouldn't have to do that. We wouldn't do it. With Your Honor's permission, we wouldn't do it. We would wait, so that no prejudice would inure on it.

Mr. Bittman: I don't want to have you misunderstand my position. I am not saying Bromley would not testify with respect to Count 1 through 7. I am not saying that.

I have never said that Bromley could not be a very
47 material witness in Counts 1 through 7. I don't want you to misconstrue—I never said that.

Mr. Williams: I wasn't misconstruing anything that you said. I am saying that all the conversations that were picked up and taped dealt with 8 and 9.

Mr. Bittman: That's not so.

Mr. Williams: Well, it is.

Mr Bittman: Well, I respectfully disagree.

Mr. Williams: And I say, Your Honor, what I am saying is in the light of what Your Honor said in his opinion that I think severance would be in order for the reasons that I have set forth.

When I represented to Your Honor that there is a difference in our position with respect to these counts, and I don't think any benefit is going to flow, in fact, I think the converse would flow terribly, if the defendant had to even make this—if the severance were granted after the Government put in all that evidence.

And I think that it would be highly prejudicial. Now, if there is some suggestion here by either Mr. Craighill by his question, or by Mr. Bittman that we have shifted positions, then I'll lay that to rest right now.

48 Right here and now, I will say to Your Honor, that if the severance is granted on 8 and 9, that we will not argue as a basis for appeal the failure to have severance of 1 and 2 from the larceny counts. I will say that for the record right here and now so there won't be any question on that, because I feel, Your Honor, very, very strongly that we are really spiked on the horns of the dilemma here, by virtue of the developments of the last five days, and by virtue of the additional facts which I have brought to Your Honor's attention this morning—this afternoon, based upon your opinion.

And I don't see, and I really don't see, and I don't think the Government can articulate to Your Honor that any prejudice would flow to the Government from what I have suggested. In fact,—

The Court: Let me ask you this question, Ed. Suppose we go to trial on 1 through 7, how long would your defense take?

Mr. Williams: Well, I would say, that counts—my feeling, based upon what Mr. Bittman has told me, and my own knowledge of the facts, my estimate is that the case could be tried in a month. Is that far off from the mark?

49 Mr. Bittman: I have no idea how long the defense would take; I have no idea.

I think our case would take, in chief, the entire case would take three to four weeks.

The Court: My question now, to both of you, is how long will the case take to try in counts 1 through 7. Of course, I am not going to hold you strictly to it—just give me your best estimate?

Mr. Bittman: I would say, Your Honor, that on counts 1 and 2, we would probably have 40 witnesses and it would take, probably, two weeks.

Mr. Williams: I would say we could complete the case with another week of testimony and that would leave time for the arguments.

The Court: Then I would be safe in saying a month?

Mr. Williams: A month.

And if that happened, Your Honor, from the point of view of the defendant, we could make a division of labor between counsel which would certainly eliminate the economic detriment to this defendant.

The Court: Those are all circumstances I shall take into consideration.

50 Mr. Bittman: In addition, Your Honor, Mr. Williams is also putting everyone in a position and I assume that we will have no choice but to proceed with counts 1 through 7 first.

Maybe it would be in the interest of the Government with respect to witnesses and availability—

The Court: I would say this about any case, Bill, that the Government is entitled to make a decision as to which counts will be tried first. If you want to try counts 8 and 9 first you can do that.

Mr. Bittman: I don't understand, if—

The Court: I have not ruled on this. I am trying to get your views and Ed's views.

Mr. Bittman: I can't follow this. Because of the fact that Mr. Williams, last week was handed one transcript and notes relating to conversations in which Baker was a participant, and was taken with the consent of one of the participants, that now a severance should be granted. I don't understand that.

I also don't understand that Mr. Baker would testify with respect to tax evasion for '61 and '62, and yet might not testify with respect to a conspiracy to evade his taxes of '63 and '64.

51 Mr. Williams: I didn't say that, Your Honor. I didn't say what he was going to testify to. I will tell Your Honor—I will be glad to tell Your Honor if it is appropriate.

The Court: I am not trying to seek any information.

Mr. Williams: I will be glad to disclose to the Court what our problem is and what we intend to do.

Mr. Bittman: The Government is always in this position and I believe this was mentioned in oral argument, if not in written motions, that in any case where there is an adjourned session, the defendant can always say, well, I want to testify to this count and I don't want to testify to this count. So here we go again, always saying that severance can be granted at the last minute, because now, for the first time he might want to take a different position with counts 1 through 7 and counts 8 and 9.

I also don't see how he can waive the point on appeal when he doesn't even know what the Government's case is going to be in counts 1 through 7. He has stated consistently that he needs all this additional information because he has no idea what this case is all about. Give us more particulars, more discovery; give us this. And how he can waive a point on appeal now just to get a severance is beyond me. I have never heard of that in my life.

52 He can very well say, at the conclusion of the Government's case he could say "Well, I didn't expect this, Your Honor, and in order to protect my client's interest we have to raise it on appeal".

I am befuddled with this conference—I just don't understand it.

It seems to me that Mr. Williams is trying desperately to get a continuance and he is trying to get everything here except the kitchen sink. The economic factors and he has told, in fact, that he didn't receive two conversations; he has possibly thrown in testifying to some counts and not others and now he guarantees the Court, which is inconsistent with a different pre-trial, that he will not put on a different defense with respect to 1 through 7 with respect to 1, 2 and three through 7; now he's waiving points on appeal. I don't know; I don't understand it.

Mr. Williams: I don't think it is hard to understand.

The Court: I think I understand your position.

Mr. Bittman: We also have the difficulty with respect to counts 8 and 9 being tried separately; there is going to be a lot of publicity surrounding this trial and when will we try the second case. Will they file a motion
53 for a six months continuance until the publicity has died down? I think he is very hopeful that the second two counts would never be tried.

Mr. Williams: I am always hopeful.

Mr. Bittman: I am not saying that Bromley would not testify in counts 1 through 7, and I am saying that he probably would so, therefore, you will have to file your motion to suppress anyway, and certainly the transcripts that were turned over to you, the Bromley transcripts—transcript of a conversation with Bromley as a participant, with Baker taking illegal campaign contributions. There certainly could be a factor in the year 1962 and I certainly don't want to lead you down the garden path and say that we are not going to use that.

The Court: I think it is clear from the record what your position is on that.

Mr. Bittman: Don, is there anything you want to add.

Mr. Hansen: Well, if it were forced to a choice I would much rather have Mr. Williams go ahead and file his motion and find out from the Jury on voir dire as to whether it would make them prejudiced in their
54 ability to impartially render this case.

Our position is, subject to my boss' overruling me here, I say, let him file his motion and see what comes up. You can't tell what the effect on the Jury is going to be until you examine them on voir dire.

Mr. Bittman: And Your Honor, I might add that I think Don Hansen has an excellent suggestion.

I might add that if Mr. Williams files his motion with the Court, the Government responded, we could select a Jury, have the Jury sequestered, as Your Honor suggested

earlier; have the hearing there and then in open Court and the Jury would be sequestered and there wouldn't be a possibility of any prejudicial publicity contaminating the Jury. I can't conceive that it would take over two hours.

The Court: Is there anything else you wish to say, gentlemen?

Mr. Bittman: All I can say is that all the subpoenas are out, most of our witnesses have been interviewed, we have them scheduled and ready to go. What more can we ask.

I have other subjects I would like to discuss that I thought were going to be brought up at this pre-trial and

I was unprepared. Do you want me to go down my
55 list Your Honor?

The Court: Well, let us dispose of this first.

Is there anything anybody else wants to say about this?

Mr. Williams: I would like to keep saying it over and over again, Judge, because I feel very strongly about it, but I don't think it would be useful to repeat our position.

The Court: Well, I just thought you might have something to add.

Mr. Williams: I really feel that the ends of justice would best be served by making a severance.

Mr. Hansen: Well, if I could add my personal views, subject to being overruled again—

Mr. Bittman: You won't be overruled Donald.

Mr. Hansen: If I were to make a choice, the Government's choice, if there were a severance, I would proceed first with counts 8 and 9 rather than 1 through 7. You were talking about trial first of counts 1 through 7.

Mr. Williams: I am not talking about anything.

Mr. Hansen: I had the impression you were talking in terms of trying counts 1 through 7 first, but if it were—if we were forced to make a choice, it would be the Government's preference to try counts 8 and 9 first and

56 Mr. Williams could file his motion.

Mr. Bittman: That's right. Because if counts 8 and 9 were tried first he would have to file his motion

in any event. That's the reason why I didn't want the record to be misrepresented that we try 1 through 7 because Bromley would testify to it in any event, so either way he would have to file a motion.

I previously indicated to Mr. Williams when he asked me how we were going to proceed as a matter of proof and I told him we would proceed by year. We would put 1961 first, 1962 second and go on to counts 8 and 9 which relate to 1963 and 1964, so we can follow a consistent pattern for purposes of the Jury, to assist them.

Mr. Williams: What the Government is really saying, Your Honor, is that they want to get all the advantages of having the case put in before a severance is granted, inundated with proof of 9 counts, over a long period of time. We would have to have two counsel throughout this case and then, if the defendant makes a representation to the Court, which I have made to Your Honor already, then a severance should be granted after all the damage has been done. Sure that is fine. If I were the Government I would like that too, if I were hungry to get a conviction.

57 I don't think that is fair, Your Honor, I really don't.

The Court: Very well, Gentlemen, I think I understand your positions.

I am not going to rule right now on this question. I want to think it over and perhaps from time to time have the reporter read back to me what has been said.

• • • • •

58 Mr. Williams: • • •

The problem is sequestration. You have been in sequestered cases, Judge, and I have too, in a lot of them.

59 The problem is the convenience of the Jury becomes paramount in the eyes of the Court and it must, I suppose, because these people are giving their services to the community; and it becomes of necessity to get

along, and I am not certain that that pressure is always good for the ultimate disposition of the case.

Pete and I had a case in Florida and we had a sequestered Jury. We began sitting at eight o'clock in the morning and we sat to seven o'clock at night. I was physically destroyed at the end of that day—it was the worst ordeal I have ever gone through.

The Court: Yes. That is too long.

Mr. Williams: We did it because the Jury was itchy and they get upset. You know they get upset; they are away from their families and are unable to attend to the routine types of business that they could attend to if they had an hour or two at the end of the day and an hour before the morning session.

The Court: The thing that disturbs me about not sequestering this Jury is the fact that the habits of the general public today is such that they are certain to listen to television and radio, regardless of any admonition of the Court not to do it. I would feel that they are going to listen and I do not want columnist A, B or C or Commentator X, Y or Z to be counsel for either side.

60 Mr. Williams: We had a trial, Judge, in which the trial judge called in all the editors of the local papers before trial and asked them to cooperate in not using new material that did not come out in open court. It worked just fine—it really did.

Judge Lombard (sic) has been the patriarch of that type of movement and it has worked very well in New York.

I think that if Crosby Noyse (sic) was called in, and Ross Wiggins and Ben Bradley were called in and asked if they would work in cooperation with the Court to make sure that no inflammatory material was published and make sure nothing happened—that doesn't cover the whole media, I recognize that there is also television—I am sure you would get a good result if you ask the Press to cooperate.

The Court: I am a little more concerned with the television commentators than I am the Press. These television and radio commentators, and I am sure you are just as aware of them as I am, in which the master mind comes on and analyses in five minutes, what has taken a day to produce in Court—I don't know the effect it has on a jurymen, but it could have a very important effect.

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**EXCERPT FROM PRETRIAL CONFERENCE OF
JANUARY 4, 1967**

3 Mr. Williams: I think I should call your attention first of all, Your Honor, to item No. 3. in the Pre-trial Conference Memorandum, in which it is recited the jury will be sequestered. Well, the one thing that disturbed me on that, Your Honor, was that the caption of the Memorandum is "Points Discussed and Agreed Upon." It was never our intention to agree to sequester.

The Court: I am not sure you did. I don't think you did.

Mr. Williams: We didn't. I said to the reporter when I saw her this afternoon that I was delighted to see her back and I restate that, because I think that we got a rather garbled transcript of the pre-trial conference, and I read it with great difficulty. But I never agreed to a sequestration, and I want to say that it is our position, Your Honor, that we object to a sequestration for reasons which I will state here and now. It is true that Your Honor said you were thinking of sequestering the jury. I came away from the conference feeling that you hadn't made a final determination on that subject. I thought

4 at the time that our position on that subject might be somewhat affected by your decision on the severance, and so I didn't say anything at that time, but I feel, Your Honor, that it would be prejudicial to the defense to sequester the jury for these reasons:

Historically, in the City of Washington, we have not used sequestered juries. I have made some effort to find out how often we have done it in recent history, and I can find there is language from the Court of Appeals on the subject by Judge Prettyman, which I have brought along here, in a case which I have called to Your Honor's attention, called Coppedge against the United States, which is reported at 272 Fed. 2nd 504.

The Court: What is that citation?

Mr. Williams: 272 Fed. 2nd 504. It was decided in 1959 by our Court of Appeals, and Judge Prettyman, speaking for the Court had this to say on the subject: "Under modern conditions juries are customarily permitted to separate even over weekends and unless there be exceptional circumstances they should be permitted to do so. Of course, newspapers carry articles about public trials of sensational interest and of course these trials may and frequently do carry statements of fact totally outside the evidence being produced in the courtroom. Our
5 newspapers have complete rights to publish such accounts, and such additional facts, but it is essential to a fair trial of a defendant that the jurors should not know the contents unless they take account of such newspaper stories. In order to protect so far as possible this essential right of a defendant we have required that trial courts call the attention of jurors specifically to the possibility of such newspaper accounts and to admonish jurors not to read them. This has been a rule for the past 20 years, or longer and this is at least the third time we have emphasized it—" He is talking about the practice in the District, Your Honor. Sequestration in a long trial, I think, works a tremendous psychological advantage to the government. I think it suggests a number of things to the jurors. It suggests perhaps that there is some feeling on the part of the Government or the Court that the defendant might attempt to tamper with them. I

think it suggests other things to the Court; it suggests that perhaps the case should be treated as though it were of more importance than the ordinary run-of-the-mill case. Furthermore, Your Honor, the jurors are in the custody of the Government. They are continuously in the custody of the Government. They are the guests of the Govern-

ment for breakfast and lunch and dinner, and they
6 are attended by the Government through the evening and overnight and in the early morning. I think this creates an unfair advantage in the conduct of the trial. I think further, Your Honor, that we can't get a representative cross-section if there is a sequestration in this case inasmuch as it is going to last as long as it is going to last, and I think that all of these things make it prejudicial to the defendant to have sequestration here.

I think that the problem of unfair publicity of prejudicial publicity can be handled by strict admonition given daily by the Court as has been historically the case in the District of Columbia, and insofar as I know there has been no request for sequestration from anyone of the parties to my knowledge. The Government hasn't requested sequestration; we haven't; and we object to it.

The Court: Do you have any views on the subject?

Mr. Bittman: Yes, Your Honor, if the Court feels that this jury should be sequestered, the Government would have no objection. When Mr. Williams informed me that he was going to oppose the sequestration of this jury, I had one of the men on our staff prepare a memorandum of law to find out what the law was. And, after some research we have not found one case in the country where any
7 appellate court has held that a judge abused his discretion when a jury was sequestered. As recently as the Black case, 1965, the Judge sequestered the jury and I might add in a very strong dissent in the Black case I believe it was Judge Miller, criticized Judge Sirica because of the prejudicial newspaper publicity which arose

almost at the outset of the trial, and I have prepared, and if Your Honor would like to take a look at it, you can—I know this was not done at your request. I had it done. It is four pages. Principally because Mr. Williams told me he was going to object to it. It does analyze some of the cases. I tried the Hoffa case in Chicago and we had a sequestered jury there for 13 weeks, and I don't believe there were any complaints by any of the jurors after 13 weeks and as a matter of fact up until the time of closing argument all of the jurors were intact and immediately prior to closing argument one of the jurors was excused because his 90-year old mother was in the hospital and wasn't expected to live; other than that all of the jurors remained throughout the trial.

I believe there are compelling reasons in this case. If Your Honor sees fit to have a sequestered jury, if he feels it is appropriate, one thing I'd like to bring to the Court's attention, and I certainly do not mean to imply that this is the reason why Mr. Williams is objecting to a
 8 sequestered jury in this case is that I was informed yesterday by a close friend of mine that *Newsweek Magazine* plans a cover story of Mr. Williams in approximately 3 weeks and certainly if this jury was not sequestered I think that there might be some problems. I believe that is accurate because he was contacted by two *Newsweek* reporters who stated this to him yesterday. I just bring those facts to the Court's attention, and I will submit this memorandum of law to Your Honor for what it is worth, and the Government has no objection to sequestered jury if Your Honor feels it is appropriate.

I will give a copy of this memorandum of law to you, Mr. Williams.

Mr. Williams: Your Honor, in the Hoffa case, of course, there were different circumstances. Hoffa had been convicted in Chattanooga of jury tampering at the time he went to trial in Chicago in the case Mr. Bittman tried. I

think against that background you had an entirely different set of circumstances; but the fact of the matter is, Your Honor, that if you put a jury in isolation for 10 weeks or 8 weeks, or 6 weeks, away from their families, away from their businesses, away from their normal social contacts it produces a psychological advantage for the gov-

9 ernment which produces convictions and I think if we canvass the situation from here back to the beginning of the century you will find the Government get convictions in sequestered cases and that is why the Government doesn't object to sequestration here.

The Court: Well, the Government according to my information usually get convictions sequestered or otherwise.

Mr. Williams: They usually do.

The Court: I think you said 90 per cent of the cases?

Mr. Williams: 90 per cent of the cases, Your Honor, but I know of only one case, only one case, Your Honor, and this has been a subject of interest to me for a long time—where there has been an acquittal in a sequestered jury in the United States. I don't know what the percentage—

The Court: Not very many cases.

Mr. Williams: But I would say it is 99.99 (ninety-nine point ninety-nine one-hundredths) situation.

The Court: The thing that disturbs me about this case and the reason I have given serious consideration to this even before discussing it with either of you gentlemen, is the Sheppard case, where the Supreme Court quite clearly said that the usual admonition was inadequate. Now, that is the type of admonition we give jurors about not reading the paper, not to listen to radios, not watching television.

10 My information is, based on what my law clerk tells me, that many many reporters, television and radio people, have called up about assuring accommodations in the courtroom. Of course, in view of what the Supreme Court said in the Sheppard case, we told them

there would be no assigned seats. If there were places available, they would be seated on a first-come, first served basis. But I mention that because it is obvious to me and I think it probably is to you, and to Mr. Bittman, that there will be very widespread coverage of this case, not only by local papers but by papers from other cities. I think it would be physically impossible for this jury to get information only from the lips of witnesses, and from other means to which they are properly restricted unless I sequester this jury. That is my obligation as I read to case to which I have referred. Obviously in that case there are many differences, many distinctions. It looked very much as though the Judge and the Prosecutor were seeking to use that case as a vehicle for re-election. We don't have that situation here and I can assure you gentlemen that many of the abuses that occurred in that case will not occur in this case. I hope no abuses will occur, but I am going to take every means at my disposal to see to it that the only evidence this jury gets is from the lips of the witnesses and testimony and exhibits properly brought before them.

I am not going to have commentators make arguments for or against the defendant, that these people may be in a position to hear if they go home at night. I feel rather strongly about that, and that is one error I don't intend to commit. I don't intend to commit any that I can avoid, but I do feel that the only way that we can assure the result of seeing to it that this jury hears only legal evidence, considers only legal evidence, is by controlling that at the outset.

• • • • •

18 Mr. Williams: Your Honor, I will say this for the record because I think it is not part of the record. We had a conference back on November 14, Your Honor, before the motions were heard, and at that time in passing Your Honor said that you had a great deal of material to read in connection with our motion to suppress, and

that it was your intention at that time to have Judge Aubrey Robinson read some of it at the time that he was sworn, and you may recall I said that I'd have to make an observation which was not designed to make my very popular with you but I objected to the delegation of judicial function.

The Court: Yes.

Mr. Williams: There's nothing in the record to show that I made that objection, and I would like to have that objection recorded.

19 The Court: All right, sir. I would also like to say for the record that the material that Judge Robinson was able to study was quite limited, and the record will reflect precisely the portions that he examined, and the rest of it was the part that I examined.

* * * * *

21 The Court: * * * I would like to say to you gentlemen, that also at Judge Sirica's suggestion, I did call for an additional panel of jurors and we will have additional jurors available from which to select the jury in this case. Since we have 12 Courts going now sitting in Criminal, we could have had a little famine around here on Monday morning if I had called for 250 or 300 jurors in the Ceremonial Court. Nobody else would have had any jurors to work with so I thought we ought to take care of that, and we have. * * *

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1 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SELECTION OF JURY PANEL

Washington, D. C.
January 4, 1967

The above-entitled matter came on before THE HONORABLE OLIVER GASCH, United States District Judge, in Courtroom No. 20, at ten a.m.

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2 PROCEEDINGS

The Deputy Clerk: Ladies and gentlemen, please stand and raise your right hands, Ladies please remove their gloves from their right hands.

(Whereupon the Clerk swore the prospective jury panel.)
Be seated, please.

Ladies and gentlemen, please listen attentively to the following questions and answer only if a particular question pertains to you.

Does any woman wish to be excused solely on the grounds that she is a woman and have her name removed permanently from the jury box?

The Deputy Marshal: Step this way, please.

The Deputy Clerk: Step forward, please.

The Deputy Marshal: No. 219, Mrs. Cecil P. Nelson.

Mrs. Anna D. Carson, No. 18.

The Deputy Clerk: Number first, please.

The Deputy Marshal: 273, Johnnye M. Wilson.

305, Irene K. Jensen.

The Deputy Clerk: 305?

The Deputy Marshal: Yes.

237, Gladys T. Cooper.

3 288, Merle Boseman.

111, Bertie M. Harley.

She would like to say something to the Court.

The Deputy Clerk: Name and number first.

The Deputy Marshal: 105, Irma B. Galane.

The Court: Now, Mrs. Galane, do you have some reason that you want to give us for my consideration?

Mrs. Galane: I cannot think to phrase this. I understand that a woman may be exempted solely on the basis of being a woman?

The Court: That is correct.

Mrs. Galane: Yes, I would like to take advantage of that. Thank you.

The Court: Very well.

The Deputy Marshal: 178, Mrs. Dolores C. Lawrence.

195, Mrs. Wilhelmina Wright.

Speak to His Honor.

The Deputy Clerk: Name and number, please.

The Deputy Marshal: 52, Willie B. Allison.

The Court: Yes, Mrs. Allison.

Mrs. Allison: Well, I can't serve now because I have a baby and no one to look after it, but I don't want to be removed permanently.

The Court: Yes, you have a seat in the courtroom
4 and we will take up your reason for cause.

The Deputy Marshal: 256, Shirley N. Noaks.

246, Christine C. Williams.

The Court: What is Mrs. Williams' number?

The Deputy Marshal: 246.

222, Helen M. Grove.

314, Ethel McConkey.

She would like to speak to His Honor.

The Court: Yes, Mrs. McConkey.

Mrs. McConkey: Your Honor, like if I started on a new job in November and it is my only income, can I be sure of my job? I would like to serve.

The Court: You would like to serve?

Mrs. McConkey: Yes.

The Court: Have a seat in the courtroom. The Court will take up individually your reason.

The Deputy Clerk: Is anyone not a citizen of the United States?

Is anyone not a resident of the District of Columbia?

Is anyone under 21 years of age?

Has anyone served within a year as a juror in any court or on any jury panel in the District of Columbia?

5 Is anyone not able to—

The Court: I believe that lady there wished to be heard. No? All right.

The Deputy Clerk: Is anyone not able to read, write and understand the English language?

Has anyone ever been convicted of a felony?

Has anyone ever been indicted?

Is anyone—

The Court: In connection with those questions, ladies and gentlemen, if you wish to speak to the Court privately you may do so.

The Deputy Clerk: Is anyone an executive or judicial officer of the Government of the United States or of the District of Columbia?

Is anyone an officer or enlisted man or woman of the Army, Navy, Air Force, Marine Corp, or Coast Guard of the United States on active duty?

Is anyone connected with the Police Department or the Fire Department of the United States or of the District of Columbia?

Is anyone of you a special police officer?

Is anyone a counselor or attorney-at-law in actual practice?

6 The Court: There is someone.

The Deputy Marshal: Come this way, please.

What is your name and number?

Prospective Panel Member: My name is John Ross.

The Deputy Marshal: What is your number, sir?

Mr. Ross: My number is 233.

The Court: Mr. Ross, would you come forward.

Mr. Ross: Your Honor, I am—

The Court: I cannot hear you.

Mr. Ross: I am a counselor out at the D. C. Training School, but not an official law counselor.

The Court: You would be eligible to serve, Mr. Ross, Thank you.

The Deputy Clerk: Is anyone a minister of the Gospel or a clergyman of any denomination?

Is anyone of you a practicing surgeon or physician?

Is anyone of you a keeper of a hospital, asylum, almshouse, or other charitable institution created by or under the laws related to the District of Columbia?

Is anyone of you a captain or master or a person employed on a vessel navigating the waters of the District of Columbia?

Does anyone ask to be excused for cause? Please
7 form a line on my left.

The Deputy Marshal: 51, Maryjane Wilson.

Miss Wilson: Your Honor, I teach elementary school and I would ask to be excused at this time so as not to interrupt the school year.

But could I serve in the summertime sometime?

The Court: Normally we seek to have jurymen serve when they are called, Miss Wilson, but under the circumstances of this case, I will permit you to be excused at this time.

Miss Wilson: Thank you, Your Honor.

The Deputy Marshal: 268, Jean M. Hurt.

Miss Hurt: I ask to be excused because of the pressures of my office. I did not get my notice until last night. I would be glad to serve later, but I cannot arrange the personnel affairs of the office.

The Court: What kind of employment do you have?

Miss Hurt: I am with the Department of State.

The Court: What is your work in the Department?

Miss Hurt: International Recruitment Officer. I would be glad to serve later, but I only got the notice last night.

The Court: Have you talked to your supervisor?

8 Miss Hurt: Yes, sir. I called him this morning and he does not wish me to serve at this time. If we had had more notice then—

The Court: Well, I will accept your excuse.

Miss Hurt: Thank you.

The Deputy Marshal: 252, Betty W. Levine.

Mrs. Levine: Your Honor, I have served in the past but we are scheduled, my husband and I, to go out of the country.

The Court: I am sorry, I didn't hear you.

Mrs. Levine: I have served in the past with pride and pleasure, but my husband and I are scheduled to go out of the country.

I would like to be excused at this time.

The Court: When do you and Mr. Levine intend to leave?

Mrs. Levine: We are going to New York on business next Tuesday and then to Mexico for the rest of the month.

The Court: Very well, you may be excused.

Mrs. Levine: Thank you.

The Deputy Clerk: 198, Elizabeth C. Kelly, letter?

The Court: Very well, Miss Kelly, in view of the representations of Doctor Lockhart, and the importance of
9 your work, I will excuse you.

Miss Kelly: Thank you very much.

The Deputy Marshal: Number 82, Mary A. Riley, has a letter.

The Court: Very well, Mrs. Riley. In view of the representation of the comptroller of your company, I will excuse you.

The Deputy Marshal: 155, Beatrice E. Endres.

Miss Endres: I have an appointment this morning with a doctor and they are so hard to get and I would like to be excused this morning.

The Court: You may be excused this morning. Would you be able to serve starting, say, next Monday?

Miss Endres: I will try, yes.

The Court: We will excuse you at this time, Miss Endres. Is there any processing, Mr. Dodd, that needs to be done?

The Deputy Clerk: What time is your appointment?

Miss Endres: It was at 10:30.

The Court: Would it be possible for you to come back and see Mr. Dodd later today, so that the processing can be completed?

10 Miss Endres: Yes.

The Court: Thank you, Miss Endres.

The Deputy Marshal: 226, Victor H. Breckenridge.

The Court: Yes, Mr. Breckenridge.

Mr. Breckenridge: I work a regular job and I have just started a junk trash business with my brother, and I work along with him so it would inconvenience me at this time, but I would like to serve at a later date.

The Court: I will excuse you.

Mr. Breckenridge: Thank you.

The Deputy Marshal: 309, Harold J. Turner.

Mr. Turner: Your Honor, sir, I have a small one-man business and at one time I served before, but I had salesmen at that time. That is a real estate business.

Right now if I am away from the office there is nothing to carry on. I ask to be excused.

The Court: I will excuse you.

Mr. Turner: Thank you.

The Deputy Marshal: 76, Allen S. Kilmer, has a letter.

The Court: Mr. Kilmer, could you tell me a little more about your work? You are the type of person that we would like very much to be able to depend on in selecting—

11 Mr. Kilmer: I am in the—

The Court: —the jury that we are trying to select in this case.

Mr. Kilmer: —branch of Administrative Proceedings and Investigations, in the Division of Corporation Finance.

I presently have pending in the Southern District of New York some criminal matters in which I am assisting the U. S. Attorney.

The Court: Now, are those cases set to be presented at this time?

Mr. Kilmer: Your Honor, I would be able to talk to you in camera on the subject.

The Court: Well, suppose you have a seat in the courtroom and I will talk to you later.

Mr. Kilmer: Thank you, Your Honor.

The Deputy Marshal: 287, Calvin W. Day.

The Court: Mr. Day, do you have anything in addition to what has been stated in this letter?

Mr. Day: No, I don't, sir, except the only one other thing that in the past when I have been on juries, I have served very infrequently in view of the fact that I am a graduate of law school, so I felt that—well, in over a period of a month I sat on only two juries.

12 The Court: Are you a member of the Bar?

Mr. Day: No, sir, I am not.

The Court: But you are a graduate of law school?

Mr. Day: Yes, Your Honor.

The Court: Well, in the Court's experience, counsel usually exercise their privilege to strike jurors who have legal training.

Mr. Day: That was my experience.

The Court: So in addition to what Mr. Knight has said, I will excuse you.

Mr. Day: Thank you, Your Honor.

The Deputy Marshal: No. 97, Stanley J. Anderson.

The Court: Mr. Anderson, you are at Graduate School at Howard University. What course are you pursuing?

Mr. Anderson: I am pursuing a social work curriculum.

The Court: You are full-time graduate student, are you?

Mr. Anderson: Yes, I am.

The Court: When did you enroll at the university?

Mr. Anderson: In September. I am on leave from the District Recreation Department as a director of the roving leader program.

The Court: I will excuse you.

13 The Deputy Marshal: 67, Eleanora Gould.

Mrs. Gould: Your Honor, I am entering the hospital on the 9th.

The Court: I am sorry.

Mrs. Gould: I am entering the hospital on the 9th, so I will be there a week and I won't be able, but I would like to serve next time.

The Court: Very well. I will excuse you.

The Deputy Marshall: 52, Willie B. Allison.

Mrs. Allison: I have a baby and I have no one to babysit now.

The Court: Well, I think your responsibilities should be in your home under the circumstances.

Mrs. Allison: Thank you.

The Deputy Marshal: 57, Margaret C. Patton.

Mrs. Patton: Your Honor, at the present time I have no one to care for my children.

The Court: I will excuse you.

Mrs. Patton: Thank you.

The Deputy Marshal: 196, Cordell H. Hayes, and a letter.

The Court: Mr. Hayes, in view of the representations of the president of your bank, I will excuse you.

14 Mr. Hayes: Thank you.

The Deputy Marshal: 247, James M. Flanagan.

Mr. Flanagan: Your Honor, I work for the Post Office Department as a substitute mail carrier and I don't have the annual leave like regular men under that status have. As it is, I lose quite a bit of money and I have to have the money to pay expenses.

I don't know when I can become a regular carrier, but I imagine it is probably within a year, but when I become a regular, I get a regular 40 hours and I can serve on a jury then, but as it is now, I won't be able to pay the ex-

penses. I am losing my pay, because I only get paid for hour wages. I don't get paid for this annual leave.

The Court: What is your name, sir?

Mr. Flanagan: James Flanagan.

The Court: Mr. Flanagan, I am going to ask you to have a seat and talk to me later about this.

We don't want you to suffer any monetary loss by reason of your service. I will talk to the Postmaster, who is an old friend of ours here at the courthouse.

The Deputy Marshal: 250, Joan P. Ryan, and a letter.

The Court: Miss Ryan, I am going to talk to Doctor Schreiner about your excuse. I know Doctor Schreiner well. He is interested in seeing that public
15 service be served by persons with your qualifications.

Miss Ryan: The only trouble is, Your Honor, we have a deadline for one chapter of a textbook he is doing. That deadline is January 1, and I am a little behind.

The Court: Are you the only one that can—

Miss Ryan: I am the one—

The Court: When would you expect to have that work out?

Miss Ryan: Well, he has two more chapters for textbooks going at the moment. I would imagine probably in April it should be slowing down a little bit.

Then we have organizational meetings in which I am the assistant editor of our official organ society.

The Court: You are Doctor Schreiner's assistant, are you?

Miss Ryan: Editorial assistant.

The Court: Editorial assistant in preparation of these texts—

Miss Ryan: Textbooks, books, articles, manuscripts.

The Court: I know about the Doctor's work.

Miss Ryan: Do you? Good.

The Court: I will excuse you.

16 Miss Ryan: Thank you.

The Deputy Marshal: 150, Louis R. Russell.

Mr. Russell: Your Honor, I am finishing up my vacation time and I haven't been in touch with my job. I don't know whether they will grant me time or not.

The Court: What is your job?

Mr. Russell: Electronic mechanic.

The Court: By whom are you employed?

Mr. Russell: Sulzer Laboratories—

The Court: I am sorry.

Mr. Russell: Sulzer Laboratories.

The Court: Yes.

Mr. Russell: In Rockville, Maryland.

The Court: Would you be willing to serve if we could discuss the matter with your employer?

Mr. Russell: Well, if he grants it.

The Court: Suppose you let the Court talk to him about that and have a seat in the courtroom.

Mr. Russell: Yes.

The Deputy Marshal: Number 16, Carrie J. Subramanian, and has a letter.

The Court: Mrs. Subramanian, is there anyone at
17 the Map Service who can perform the specialized duties that are set forth in Colonel Van Atta's letter?

Mrs. Subramanian: I think they could do some of the work. I don't know about the Vietnamese, because I am the only one, but I would like to serve.

The Court: We would like very much to have you serve, but I don't wish to inconvenience the Map Service at this time, particularly in view of your knowledge of the Vietnamese language.

Mrs. Subramanian: Well, could I have an opportunity to serve again, maybe?

The Court: Oh, yes.

Do you think that there is anyone there that can perform the duties that you perform during the time you would be serving?

Mrs. Subramanian: I think so, except for the language.

The Court: Except for the language. That is rather important.

Mrs. Subramanian: It is.

The Court: With regret, I think I will have to excuse you at this time in view of Colonel Van Atta's letter, but we would like you to serve some other time.

18 Mrs. Subramanian: Thank you.

The Deputy Marshal: 333, Leroy Watson.

Mr. Watson: Your Honor, I would like to be excused on the ground that I have—

The Court: I am sorry—

Mr. Watson: I have in Ahoskie, North Carolina, 22 lots and I was told that those lots were picked for a home for the aged and they wanted me to come down. I had planned to go down this week end to see if—to negotiate it, plus I have on one of the lots a house with a man and a house full of children and they haven't paid rent in three months and I want to do something about that.

So I had planned this week to go down and I wonder if I could get off on those grounds.

The Court: Well, I think that is a good excuse. I will excuse you.

Mr. Watson: Thank you very much.

The Deputy Marshal: 220, Roberta W. Dodd with a letter.

The Court: Mrs. Dodd, isn't it possible to get a substitute teacher?

Mrs. Dodd: No. At the present time it isn't. When a teacher is out, the class is broken up and put in—
19 all over the building, but I would be very happy to serve during the summer. I am off the entire summer and I would like to serve, if it could be arranged.

The Court: As I told another lady, we don't have a summer schedule for jurors, and the court will sit all summer.

I had understood that the public schools did have substitute teachers who could take the place of regular teachers,

when the regular teachers for some reason or other were unable to teach.

Mrs. Dodd: We are supposed to have substitutes, but the entire last year, all of last year, when a teacher was out, the classes had to be broken up and I have seen one substitute teacher in our building this year, only one.

I think there is one coming today for someone who had a death in her family, but I would love to serve. I have no objection.

The Court: We would like to have you serve, but in view of that situation that your supervisor has mentioned, I will excuse you at this time.

The Deputy Marshal: 186, Miss Pauline M. Hall.

Miss Hall: Well, Your Honor, I am self-employed and I can't take the time off now to serve.

The Court: What is your employment?

20 Miss Hall: I have a dress shop.

The Court: There is no one there that can run your dress shop in your absence?

Miss Hall: No, because this is custom. I actually do the work. I do the sewing so I can't have somebody else do it.

The Court: Very well. I will excuse you.

The Deputy Marshal: 263, Donald F. Foley.

The Court: Yes, Mr. Foley.

Mr. Foley: Your Honor, the job I have, I work for a small—

The Court: I am sorry.

Mr. Foley: —electrical firm and I do not get paid when I take off and I do have debts.

I would like to be excused.

The Court: Is your compensation on an hourly basis, something like that?

Mr. Foley: Yes.

The Court: Very well. I will excuse you.

The Deputy Marshal: 138, Arreatha S. Johnson.

The Court: Yes, Mrs. Johnson.

Mrs. Johnson: Your Honor, I am self-employed and manager of—

21 The Court: I am sorry. I can't hear you.

Mrs. Johnson: I am self-employed and manager of the store and I should like to be excused for that reason. There is a requirement that I be there or my husband be there. He is employed in the government and can't be there.

The Court: I will excuse you.

Mrs. Johnson: I would like to serve at a later date.

The Court: We will make a note of that.

Mrs. Johnson: Thank you.

The Deputy Marshal: Number 35, Thomas A. Devan.

Mr. Devan: I am a student at George Washington University and also doing substitute teaching and I am kind of depending on this substitute teaching to help carry me through school. I just have a feeling that this might make it difficult for me to go on.

The Court: I think in view of that circumstance we should excuse you.

The Deputy Marshal: Number 15, Marian L. O'Connell.

The Court: Mrs. O'Connell, we would like very much to have jurors of your type serve but I recognize, however, the force of the recommendations of the Treasury Department.

22 Since one of the cases that possibly this panel will be called upon to sit on involves tax matters,

I rather imagine that counsel would have some reservation about someone as close to tax matters as you serving on the jury so I will excuse you.

Mrs. O'Connell: Thank you.

The Deputy Marshal: 151, Cornelia M. Ball.

Miss Ball: I would like to serve, but I worked on a newspaper until very recently and with my understanding of a case coming up, I won't be eligible and I am in a new job which I am trying to set up and it is kind of a hard time to leave.

The Court: You would be able to write a book perhaps if you serve on a jury.

Miss Ball: But when I served before I have always had this problem, that no one wants me because I come with prior knowledge. As I say, we are in a tight spot because I am trying to set up a new office at the Planning Commission.

The Court: What type of writing do you do?

Miss Ball: Well, I was on the News when I was covering —on the City Desk, also working on the desk and reporting. I covered most everything.

The Court: With what organization are you connected now?

23 Miss Ball: National Capitol Planning Commission.

The Court: I see.

Miss Ball: I have only been there a few months.

The Court: It strikes me that you are the type of juror we would like very much to have.

Miss Ball: Oh, I would like to serve, if you think I will be accepted.

The Court: Well, we would be very happy to have you at least seek to get on a panel.

Miss Ball: Fine.

The Deputy Marshal: 307, Betty Randall.

The Court: Yes, Mrs. Randall.

Mrs. Randall: I have just signed a contract to teach two classes at Teachers' College. They are classes I have created and there are no substitutes who could take my place. Otherwise, I want to serve.

The Court: Don't you think in view of the nature of service on the jury and its importance to the public that your employers would recognize this fact?

Mrs. Randall: I know they would recognize the fact but they would have no means of substituting somebody in my classes.

In fact, when I have—

24 The Court: You have started to teach, have you?

Mrs. Randall: Yes, I teach there now, and they are two classes, three hours each, per week, and there is nobody else in the department who does teach them. It is a peculiar situation.

The Court: What do you teach?

Mrs. Randall: I teach introduction to anthropology and the problems of the urban community.

The Court: I will excuse you.

The Deputy Marshal: 257, Lavinia R. Austin.

Mrs. Austin: I would like to be excused because my husband is ill now.

The Court: Is it not possible for you to make other arrangements?

Mrs. Austin: Not right now.

The Court: It is not?

Mrs. Austin: No.

The Court: Very well.

The Deputy Marshal: 86, Addie Diggs.

Mrs. Diggs: Your Honor, I would like to be excused because I keep my 18-month old grandbaby. I looked for a baby-sitter and I can't find one, and it is necessary for my daughter to work.

25 The Court: I will excuse you.

The Deputy Marshal: 99, Eddye L. Williams.

Mrs. Williams: I want to—

The Court: I am sorry, Mrs. Williams. I can't hear you.

Mrs. Williams: I have laryngitis and I want to take my pill and gargle my throat.

The Court: Mr. Dodd, can you tell me what the lady said?

The Deputy Clerk: She said she had laryngitis and she wanted to go gargle her throat.

The Court: Do you wish to be excused?

Mrs. Williams: Just for now.

The Deputy Clerk: You don't wish to be excused from serving on the jury? You just want to leave now?

Mrs. Williams: Yes.

The Deputy Clerk: Go ahead. Just come back and have a seat.

The Deputy Marshal: 227, Marjorie L. Davis.

Mrs. Davis: I am not asking to be excused, but I am not clear on one point. I am an ordained minister. Am I acceptable?

26 The Court: Mr. Dodd, that is one of your questions, is it not?

The Deputy Clerk: Yes, Your Honor, minister of the gospel, clergyman of any denomination.

The Court: I would think in view of that, that you would be excused.

Mrs. Davis: I am not asking to be excused, if I am eligible.

The Court: If you are eligible?

Mrs. Davis: Yes.

The Court: How about that, Mr. Dodd.

Mrs. Davis: In filling out the application I was under the impression that I was eligible, but I want to clarify it.

The Court: I am going to ask you to have a seat. We appreciate very much your willingness to serve and if that section of the Code is so drawn that it will permit you to serve, we would be very happy to have you.

The Deputy Clerk: What was your number again, Ma'am?

Mrs. Davis: 227.

The Deputy Marshal: 27, Isabelle M. Short.

Mrs. Short: I would like to be excused. I have my grandchildren to take care of and a baby-sitting job.

27 The Court: Yes, I think that is a good reason.

The Deputy Marshal: 244, Emma M. Johnson.

Mrs. Johnson: I am being treated for high blood pressure and anemia and I should like to be excused.

The Deputy Clerk: Speak a little louder.

Mrs. Johnson: Anemia. I should like to be excused.

The Court: Do you think in view of your health you would not wish to serve at this time?

Mrs. Johnson: Yes.

The Court: Do you think your health would improve so that you might serve in the future?

Mrs. Johnson: I hope so.

The Court: You don't wish to be removed from the jury list?

Mrs. Johnson: No.

The Court: Very well. We will excuse you at this time.

The Deputy Marshal: 260, Robert Page.

Mr. Page: Your Honor, I would like to be excused. I work for Georgetown Hospital on special cases and I take out doctors and nurses to visit the sick and I set up equipment for the sick for the hospital in their homes. I would like to be excused because there is, nobody to take my place.

28 The Court: We will excuse you.

Mr. Page: Thank you, sir.

The Deputy Marshal: 131, Mary L. Damm.

The Court: Miss Damm, you are the type of person we would like to have serve, but I appreciate the importance of your job to your organization. I will excuse you.

Miss Damm: Thank you very much.

The Deputy Marshall: 149, Raymond P. Wilson.

Mr. Wilson: Your Honor, due to the sickness of two personnel in our office, sickness and injury, rather, I have had the opportunity to work overtime. I have recently separated so I am suffering from hardship right now. I would be willing to serve—

The Court: I am sorry, Mr. Wilson.

Mr. Wilson: I say I would be willing to serve at a later date.

The Court: Very well. We will excuse you at this time.

Mr. Wilson: Thank you.

The Deputy Marshal: 249, Sheldon L. Walker.

Mr. Walker: I would like to be excused, not permanently excused, but I would like to speak to you privately first.

29 The Court: Yes, you may come to the Bench.

(Whereupon Mr. Walker approached the Bench and the following occurred:)

Mr. Walker: Your Honor, I have been indicted. I would like to be excused now. I would like to serve later on after the trial is over.

The Court: I think under the circumstances you should be excused at this time.

Mr. Walker: I would be glad to serve when it is over.

(In Open Court)

The Deputy Marshal: 229, Clyde S. Lawrence.

Mr. Lawrence: I am supposed to enter the hospital Friday to have my leg removed.

The Court: I am sorry you are confronted with such a serious operation and, of course, under the circumstances the Court will excuse you.

The Deputy Marshal: 193, Ben Karlsen.

The Court: Yes, Mr. Karlsen.

Is there anybody in your store that can handle your important duties if you are serving as a juror?

Mr. Karlsen: No, I am the only carpenter.

The Court: You are the indispensable man.

30 Mr. Karlsen: Well, I am the only union man there.

The Court: I will excuse you.

Mr. Karlsen: Thank you.

The Deputy Marshal: 34, Norma E. Lambke.

The Court: I think in view of the circumstances you should be excused. Would you like to have this back?

(Returned paper.)

The Deputy Marshal: 87, Edmond Chin.

Mr. Chin: It would be inconvenient to serve on the jury now because it would curtail the research project that I am working on.

The Court: Can you give me a little more information about your project, Mr. Chin?

Mr. Chin: Yes, I am a chemist with the Bureau of Mines, working in electro-chemistry.

There is unfortunately one person doing the lab work on the project and that is me.

The Court: Of course it is inconvenient for most jurors to perform this public service. We recognize that, but it is also very important that the jury service be performed by representative members of the community, and the Government, I think, must recognize this and help cover persons like yourself who are willing to serve
31 but who recognize the obligation to their employers.

Would you be willing to serve if the Court spoke to your agency?

Mr. Chin: Of course, if you would do that.

The Court: Very well, Mr. Chin. Have a seat in the courtroom. We will talk to you later.

The Deputy Marshal: 303, Wade H. Atkinson.

The Court: Mr. Atkinson, is there no one else that your firm could call upon to do this estimating work that you perform?

Mr. Atkinson: No, sir. I am the only estimator there. It is a very small new company.

The Court: I will excuse you.

The Deputy Marshal: 275, Melvin N. Jasper.

Mr. Jasper: Your Honor, my wife is due for major surgery over the week-end and I don't have anyone else to take care of my two children. I would be willing to come back but—

The Court: I think that is a very good reason. You will be excused.

The Deputy Marshal: 121, John W. Valentine.

Mr. Valentine: Your Honor, due to the condition of my wife and her physical condition and my physical
32 condition, is the reason I don't think I could concentrate like I should when I serve as a juror. I have served before and my mind has so many things like that.

The Court: I hope you are feeling better, Mr. Valentine. I don't want to put this burden on you under the circumstances. You may be excused.

The Deputy Marshal: 211, Kloman M. Thomas.

Mr. Thomas: Your Honor, due to the passing of my sister on Monday—

The Court: I am sorry, sir. I can't hear you.

Mr. Thomas: I say my sister passed away Monday and the funeral will be tomorrow or Friday. I would like to be excused until Monday, but would like very much to serve.

The Court: Well, I think under the circumstances you could be excused until Monday.

Mr. Dodd, can you arrange for the gentleman to fill out the necessary papers?

Mr. Dodd: Yes.

The Court: We won't need you and the other members of the panel until Monday.

The Deputy Marshal: 267, Beatrice R. Fulton.

The Court: Mrs. Fulton, the Court recognizes the importance of your work for the Government, but we
33 do feel that we should try to get on the juries people who do the type of work that you do.

Mrs. Fulton: Well, I think my work could be juggled around, but I don't think I will tell my chief that. I would like for him to think I am needed.

The Court: You are a very candid and honest person. Again, we would like to have people like yourself.

Mrs. Fulton: If you can arrange it with Mr. Long, I will be happy to.

The Court: I will be glad to speak to Mr. Long.

The Deputy Marshal: 331, Margaret M. Dignan.

Miss Dignan: My only problem is that I didn't receive my summons until 10 o'clock last night and I couldn't make any arrangements in my office.

The Court: What is your office?

Miss Dignan: I work for Mr. Fred Hass of John I. Hass, Inc. We are dealers in hops and he is our president. He

will be out of town next week but I do sort of need to arrange a number of things this week before I could be excused.

The Court: Do you think that you could make the appropriate arrangements this week? This panel will not be called into service until next Monday.

34 Miss Dignan: I am sure they would agree to that, but if I had had a little notice.

The Court: We realize that this—

Miss Dignan: Came home from out of town and found it under my door.

The Court: What is the work of the Haas Company?

Miss Dignan: We are dealers, importers and exporters of hops.

The Court: Is there anyone there who could take your position in your absence?

Miss Dignan: There are some other ladies that work with me and if I could just get things straightened out a little I am sure they can get along nicely. But I left an awful mess—

The Court: Would it be possible for you to check further into the prospect of your service and we won't pass directly on your application—

Miss Dignan: I just wanted to be excused for several days so that I could get my work out.

The Court: We wouldn't need your service until next Monday at the earliest.

Miss Dignan: I could probably come back next Monday.

The Court: We will defer passing on your request
35 at this time.

Miss Dignan: Then do I come back Monday?

The Court: Yes. See Mr. Dodd.

The Deputy Clerk: Have a seat in the courtroom now.

The Deputy Marshal: 147, Gloria J. Jackson.

The Court: Yes, Miss Jackson.

Miss Jackson: Your Honor, I have a young child who is scheduled to take several tests next week, during the

day for the next two weeks, in preparation for an operation.

The Court: I think you should be excused.

The Deputy Marshal: 284, Lawrence J. Washington.

The Court: Yes, Mr. Washington.

Mr. Washington: Your Honor, I have a health problem. I have a heart condition. I am under—taking nitroglycerin, and I am afraid that I would be somewhat under—

The Court: Do you think protracted service at this time might be unfortunate for your medical condition?

Mr. Washington: I have that belief.

The Court: Very well, the Court will excuse you. I am sorry to hear you are not in good health and I hope you feel better.

Mr. Washington: Thank you very much, Judge.

36 The Deputy Marshal: 170, James C. Hebb.

Mr. Hebb: I have a letter. That was last May.

The Court: I am inclined to agree with your doctor, sir. I think we should not ask you to serve under the circumstances. I hope your health improves.

Mr. Hebb: Thank you.

The Court: Pass this down to him.

The Deputy Marshal: 79, David A. Nelson.

Mr. Nelson: Your Honor, I have been convicted of a violation of the Volstead Act. Does that disqualify me?

The Court: It was so long ago I have forgotten.

Mr. Nelson: Had to do with whiskey.

The Court: I guess many of us were responsible for these things—

Mr. Nelson: Sir?

The Court: Many of us were perhaps responsible for these things, that long ago.

Will you step around to the Bench, please, sir?

(Whereupon Mr. Nelson approached the Bench and the following occurred:)

The Court: Could you tell me a little bit more specifically?

Mr. Nelson: It happened in 1921. You remember
37 it was whiskey.

The Court: Was it a felony or a misdemeanor?

Mr. Nelson: I don't know.

The Deputy Clerk: What sentence did you get?

Mr. Nelson: Well, I was given probation. I don't remember exactly, about 30 days, Lincoln Nebraska, about 1921.

The Court: What do you do now?

Mr. Nelson: Real estate broker.

The Court: You have had no other involvement with the law?

Mr. Nelson: Only with automobiles.

The Court: I suppose they are just minor automobile offenses?

Mr. Nelson: Only minor.

The Court: Nothing that resulted in any police record?

Mr. Nelson: No, sir.

The Court: I would certainly think under that representation that you would not be ineligible. If you are willing to serve, we would be glad to have you serve.

Mr. Nelson: All right, sir.

(In open Court)

The Deputy Clerk: Mr. Kilmer. Have a seat. I
38 called the wrong name.

Number 247, Mr. James M. Flanagan.

The Court: Mr. Flanagan, I understand that you have a little difficulty with perhaps parking your car in a space that may be expiring, and you don't want to commit an illegal act, so I am going to excuse you.

Mr. Flanagan: Thank you, Your Honor. Thank you very much.

The Court: Would you come to the Bench, please, Mr. Kilmer?

(Whereupon Mr. Kilmer approached the Bench and the following occurred:)

The Court: You are very much the type of man I would like to see serve on this jury. One of the cases set that will be first brought to the attention of this panel will be the Baker case.

Mr. Kilmer: Is Boris Kostelanetz connected with it?

The Court: He is a counsel.

Mr. Kilmer: He would not permit me to serve. He was defense counsel on a case that lasted over one year in New York.

The Court: He is an old acquaintance of yours?

Mr. Kilmer: Very much so.

39-49 The Court: I think under the circumstances then we will have to excuse you.

Mr. Kilmer: And I also know Edward Bennett Williams from SEC matters.

The Court: He wouldn't want you to serve?

Mr. Kilmer: I don't think so.

The Court: Unfortunately, I can't persuade either of them to change their opinions, but I still have the view that it would be well to have people of your standing on juries.

Mr. Kilmer: I have cases I should have been in New York for during the last three weeks, but I couldn't get away and now I have to call the U. S. Attorney up there after this to tell him when I can get there.

(Mr. Kilmer left the Bench.)

(In Open Court.)

The Deputy Clerk: Mr. Chin, Mr. Edmond Chin, will you step forward, please?

The Court: Mr. Chin, will you come to the Bench, please?

(Whereupon Mr. Chin approached the Bench and the following occurred:)

The Court: Mr. Chin, we are trying to get a very
50 representative jury for this particular case. It is
going to be an extremely interesting one and I think
it is one that you would remember the rest of your life.

As I indicated previously to you and some of the other
jurymen, I recognize that the Federal government seeks
to keep its people employed at the task for which they
were selected.

However, when situations of this character do come up,
I am sure the Government would recognize the importance
of allowing you to serve on a special case of this kind.

Is there any reason why you would not wish to serve—
a personal reason?

Mr. Chin: No. I would like to serve but I just don't
want to leave my experiments at this point.

The Court: What is the nature of your experiment?

Mr. Chin: It is an internal reporting analysis. We
have lost one man on our staff. I was promoted to act as
project leader. That means that I have to do much of the
management work for my project as well as the local work.
Doctor Schlain—

The Court: What is the nature of the experiment?

Mr. Chin: I am forming an alloy by electrolysis, not
made by thermal means, because it is a mechanical
51 mixture when prepared thermally, coatings for oxida-
tion and corrosion protection. I would like to com-
plete this series of experiments. I don't mind serving on
the jury but it would be a little inconvenient. In fact, I
didn't get the summons until Monday.

The Court: You are project leader?

Mr. Chin: Yes.

The Court: Well, all right, I will excuse you.

Mr. Chin: I appreciate that very much.

(In Open Court.)

The Court: Mr. Russell, come to the Bench, please.

(Whereupon Mr. Russell approached the Bench and the following proceedings were held:)

The Court: Who are your employers?

Mr. Russell: Sulzer Laboratories of Tracor.

The Court: Would you spell that?

Mr. Russell: T-r-a-c-o-r.

The Court: What is your work?

Mr. Russell: Electronic mechanic.

The Court: Is there anyone out there who can do your work in your absence?

Mr. Russell: I suppose so, but most of my work is building special equipment and things that the engineers
52 design, prototypes.

The Court: You see there is a special case that will be submitted to a jury drawn from this panel and others perhaps, the Baker case.

Do you know anything about the Baker case?

Mr. Russell: Not too much.

The Court: It is a case involving income tax, some theft counts, some conspiracy. It involves Bobby Baker, Secretary of the Majority, on Capitol Hill. It should be a very interesting case.

However, I think service on the Baker case will be somewhat protracted, a minimum of a month, maybe six weeks.

Mr. Russell: I see.

The Court: Of course we will go into these things in greater detail when the panel is actually selected. It will be a panel of twelve jurors, and six alternates will be selected, primarily from this group.

Do you think you could afford to take that much time away from your work? How are you paid?

Mr. Russell: I am paid annually. Like I say, I couldn't give any judgment until I talk to my employer.

The Court: Would you be able to go out and talk to your employer over the telephone at this time?

53 Mr. Russell: Well, I could, sir.

The Court: Would you do that?

Mr. Russell: Yes, sir, I will.

The Court: Let the Court know, or let Mr. Dodd know what your answer is. I don't want to inconvenience or prejudice anybody in his job, but most employers are willing to make whatever arrangements are necessary when their employees are called to perform this particular work.

Mr. Russell: Yes, sir.

The Court: Suppose you go out and talk to your employers.

(Mr. Russell left.)

(In Open Court.)

The Court: Miss Ball.

The Deputy Clerk: Miss Cornelia Ball.

The Court: Would you come to the Bench, please.

(Whereupon Miss Ball approached the Bench and the following proceedings were held:)

The Court: As I said to you earlier, I think that this is the kind of case that you would always remember serving on.

Miss Ball: I think that is very true.

54 The Court: In my experience agencies of the Government are willing to recognize the fact that this is important. Jury duty must be done by representative citizens of the community.

Now let me ask you this question: The case I have in mind, of course, is the Baker case.

Miss Ball: Yes, I know that.

The Court: Do you have any preconceived notion of that case based on what you have read about it? Of course, newspaper people usually—

Miss Ball: I helped work on coverage of it.

The Court: Yes.

Miss Ball: That is why I said that. There is more involved than just simply reading about it.

The Court: To what extent?

Miss Ball: You know there is one reporter—mainly editing copy and that sort of thing.

The Court: You did edit copy on this case, hearings before the Senate Committee?

Miss Ball: On the original investigation that the newspapers did on it.

The Court: It would be rather difficult to express the view that you had no preconceived notion about it?

55 Miss Ball: It honestly would. I would have to be honest about this.

The Court: Of course.

Miss Ball: Because I am aware of the stories that didn't get printed, that sort of thing.

The Court: I think in view of that I should excuse you.

Miss Ball: Give me another year and I will have been away from the newspaper long enough. I served once before and I couldn't get on anything because everything that came up I was involved with some way or other.

The Court: With reluctance I excuse you.

Miss Ball: Give me another year and then I will have been away from the newspaper long enough.

(Miss Ball left the Bench.)

(In Open Court.)

The Court: Mrs. Fulton, would you mind coming to the Bench, please?

(Whereupon Mrs. Fulton approached the Bench and the following proceedings were held:)

The Court: Mrs. Fulton, the case that we have in mind is the Baker case.

Mrs. Fulton: What?

56 The Court: The Baker case, on the Secretary to the Senate Majority. What is the nature of your work?

Mrs. Fulton: I am a secretary.

The Court: Have you had any interest in that case specially?

Mrs. Fulton: Not particularly.

The Court: Have you formed any, shall we say, impressions of his guilt or innocence, or do you feel that you could try the issues in that case, which involve income tax matters, theft counts, and conspiracy, solely on the basis of what you heard in court?

Mrs. Fulton: I am sure I could, Your Honor.

The Court: Would you be interested in serving in the case if you were selected?

Mrs. Fulton: I served before. This is the second time. I have served before.

The Court: This would be a somewhat protracted case, and perhaps last as much as six weeks, but I would think that after the case is over, you wouldn't be bothered again for some years.

Mrs. Fulton: Well, I was all set to go, cleaned my desk out and was already when they called me in at five o'clock and said I hadn't better go.

57 The Court: I could talk to Mr. Long about it.

Mrs. Fulton: He is our new chief.

The Court: I think he would recognize the importance of having representative citizens on the panel.

Mrs. Fulton: I am sure he would. In fact he told me I could go, but his chief said no. It was just reorganized and it went into effect yesterday, so nobody knows what anybody is going to do right now, but secretarial work can be juggled around, you know.

The Court: Suppose I talk to him and we will not at this time excuse you, but if it doesn't work out, of course, you can be excused on Monday.

Mrs. Fulton: What are my instructions now, go back to work?

The Court: No, wait until Mr. Dodd processes the panel.

Mrs. Fulton: All right. Thank you.

(Mrs. Fulton left the Bench.)

(In Open Court.)

The Deputy Clerk: Mrs. Ethel M. McConkey.

The Court: Would you come to the Bench, please?

(Whereupon Mrs. McConkey approached the Bench and the following proceedings were held:)

58 The Court: Yes, Mrs. McConkey.

Mrs. McConkey: Your Honor, I went on a new job in November and, well, they kept me on, liked my work.

The Court: What is your work?

Mrs. McConkey: Sales work. I work at Morton's on Pennsylvania Avenue. I like my work and my only income is my job.

The Court: You think if you were required to serve, say, for six weeks, it might prejudice you in your job?

Mrs. McConkey: Well, see, this is my schedule for this week. I did ask him last night when I got off work if there was any way possible if it came up too soon, could I work tonight, like, say, to 9 or something like that and he said all right. But I didn't ask him full-time, you know what I mean?

The Court: This would probably prevent you from doing any work during that six weeks' period, take you away from your work.

Mrs. McConkey: This is very nice and it is the first job I have worked at. It is ten blocks from home and I just walk there and walk back. I don't want to lose the job.

The Court: I think I better excuse you.

59 Mrs. McConkey: I didn't know what to do, Your Honor. I don't want to say no because I don't know which way to turn and I got in here and it is an honor to serve.

The Court: I think you would enjoy serving. We will call you again.

(Mrs. McConkey left the Bench.)

(In Open Court.)

The Deputy Clerk: Mr. Russell.

(Mr. Russell approached the Bench.)

The Court: Mr. Craighill tells me he talked to your employer and in view of what Mr. Sulzer told Mr. Craighill about his difficulty in getting anyone else to do the work which you do, I will excuse you.

Mr. Russell: Thank you.

(Mr. Russell left the Bench.)

(In Open Court.)

The Deputy Clerk: Miss Margaret M. Dignan.

The Court: Would you come around, please?

(Whereupon Miss Dignan approached the Bench and the following occurred:)

The Court: Now, as I understand your situation you just got this notice rather late.

Miss Dignan: Late last night.

The Court: You haven't had a chance to explore
60 it with your employer?

Miss Dignan: I called a vice president and he said to go down and do whatever was necessary. He hoped that I could have a couple of days to get things in order.

The Court: You won't have to report for this assignment until next Monday.

Miss Dignan: They had me excused last year so they think this year I should serve.

The Court: We would like to have you serve. We are trying to get as representative a jury as possible.

If you can get things squared away and be back here next Monday—

Miss Dignan: Mr. Haas is leaving Friday for a couple of weeks so that would work out pretty well. I work for him and so while he is gone I would do it. Would it be very long, do you think?

The Court: I would say about six weeks. That is the Baker case.

Miss Dignan: Oh, Bobby Baker.

The Court: It should be a very interesting case. Let me ask you this question. I just excused a newspaper woman who had done some work on a paper, because she had formed an opinion about it.

61 I will certainly ask all members of the panel next Monday whether they have formed any opinions about the case, about his guilt or innocence. Have you formed any opinion?

Miss Dignan: Not too much. I am from Montana and I haven't paid much attention to it. My father is a lawyer and my uncle—

The Court: You are the kind of person we want to have on jury panels.

Well, if you will come back next Monday—

Miss Dignan: Thank you.

The Court. Just a minute. Mr. Dodd, this lady does want to leave as soon as possible.

Miss Dignan: I always thought they had to serve us in person. I wasn't. It was in an envelope.

I was out of town and I almost didn't notice it. I had all this junk mail.

(Confers with Clerk.)

(Miss Dignan left the Bench.)

(In Open Court.)

The Deputy Clerk: Ladies and gentlemen, again please answer in a loud voice as your name is called.

[caption omitted]

Affidavit

I, Edward Bennett Williams, being sworn, deposes and says:

1. This affidavit is made in support of the defendant's motion for new trial.

2. The following news item appeared in the Washington Evening Star on Wednesday afternoon and evening, and Thursday noon, January 4 and 5, 1967

JUROR PROSPECTS FOR BAKER TRIAL BEING SCREENED

More than 240 prospective jurors appeared in U.S. District Court today to be screened for possible service next Monday in the trial of Robert G. (Bobby) Baker.

Judge Oliver Gasch, who will preside at the trial, excused some 40 individuals because of sickness and varying obligations. No mention of the Baker trial or its possible length of seven weeks or more was made to the prospective jurors.

The U.S. marshal's office received the unusually large list of 350 residents only last Friday and had notified all of those who could be reached to be present today.

On Monday, the remaining prospective panelists will appear in court and will be screened further through detailed questioning by counsel for Baker and the government. The indictment charges the former Senate majority secretary with larceny, income tax evasion, fraud and conspiracy.

s/ EDWARD BENNETT WILLIAMS
Edward Bennett Williams

Subscribed and sworn to before me this 10th day of March, 1967.

s/ LILLIAN M. KEATS
Notary Public. D.C.

My Commission Expires May 14, 1971

[caption omitted]

Affidavit

Michael E. Tigar, being sworn, deposes and says:

1. This affidavit is made in support of the defendant's motion for new trial in the above case.

2. I have examined the records of the Clerk, United States District Court for the District of Columbia, and the records made and kept by the court official having charge of the Jury Lounge in the United States Courthouse, District of Columbia.

3. The following information was obtained from the above records.

4. For July 1966, 400 names were drawn by the jury commissioners on June 8, 1966, for service on grand and petit juries and return was made on June 23, 1966.

5. For August 1966, 400 names were drawn on July 6, 1966, and return was made on July 21, 1966, before Curran, J.

6. For September 1966, 600 names were drawn on August 3, 1966, and return was made on August 25, 1966, before Gasch and Bryant, JJ.

7. For October 1966, 700 names were drawn on September 7, 1966, and return was made on September 22, 1966, before Keech and Matthews, JJ.

8. For November 1966, 700 names were drawn on October 5, 1966, and return was made on October 20, 1966, before McGuire and McGarraghy, JJ.

9. For December 1966, 700 names were drawn on November 2, 1966, and return was made on November 17, 1966, before McGuire and McGarraghy, JJ.

10. For January 1967, 700 names were drawn on December 7, 1966, and return was made on December 19, 1967,

McGuire and Bryant, JJ. presiding. An additional 335 names were drawn December 30, 1966, and return was made January 4, 1967, before Gasch, J.

11. Each month, the clerk in the jury lounge makes a list of those jurors who are summoned, and who appear and are found qualified. The list is sent to the police department, and those jurors who have criminal records are excused. The clerk makes up a list of jurors in alphabetical order, showing the name, address, age, and occupation of each juror. The following figures are taken from the official records of the clerk, and reflect the number of jurors accepted for serving during the months listed:

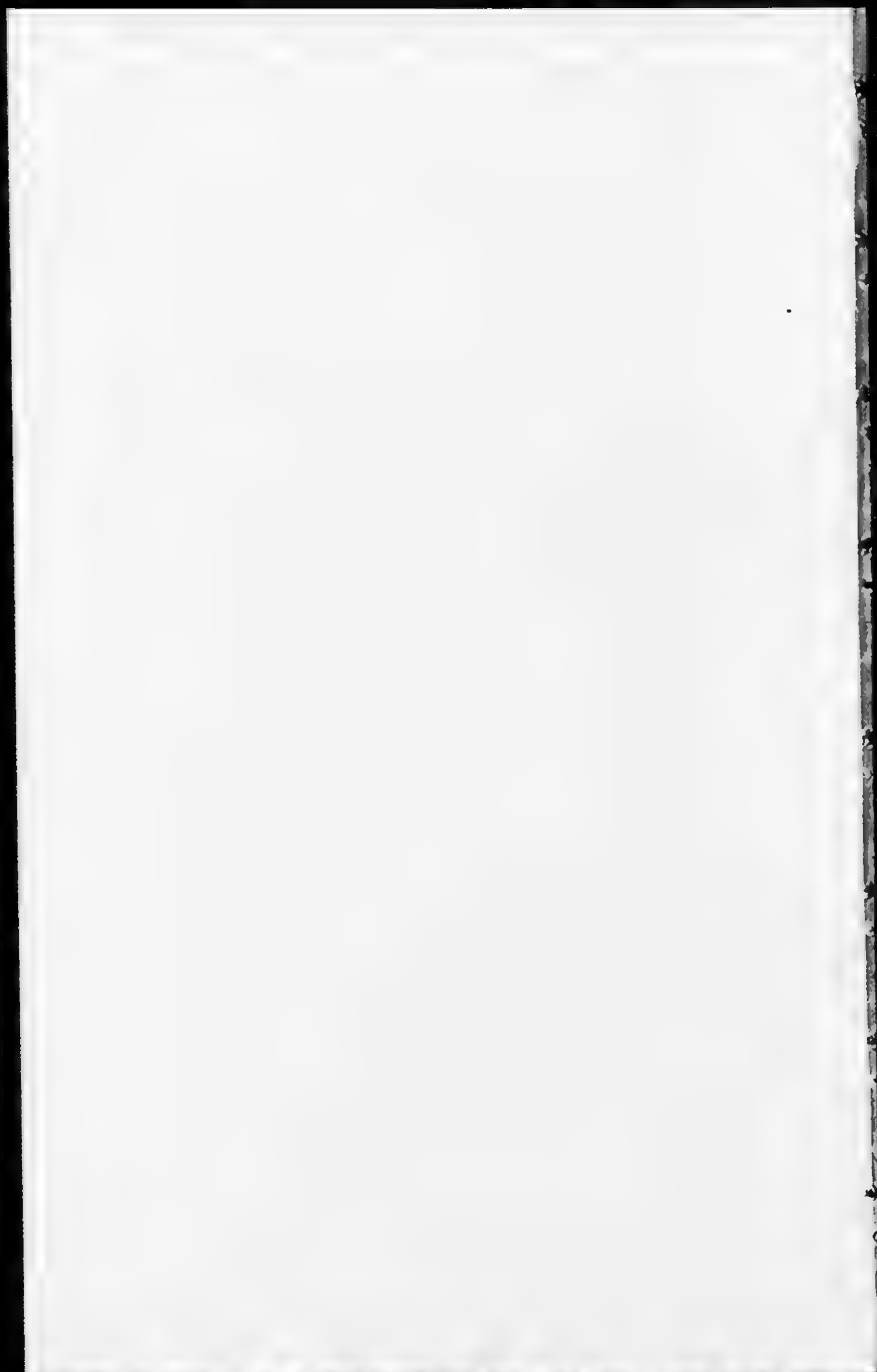
Month	Number
January 1966	294
February 1966	293
March 1966	289
April 1966	297
May 1966	292
June 1966	286
July 1966	185
August 1966	154
September 1966	194
October 1966	289
November 1966	295
December 1966	266
January 1967	(318 (sworn Dec. 22, (1966) (177 (Sworn Jan. 4, 1967)
	<hr/> 495
February 1967	317
March 1967	319

12. Your affiant is informed and believes that the jurors sworn January 4, 1967, who were excused from service in the case of *United States v. Baker*, Crim. No. 39-66, were excused from all service at the January term.

/s/
MICHAEL E. TIGAR

Subscribed and sworn to before me this — day of March, 1967.

/s/ LILLIAN M. KEATS
Notary Public



QUESTIONNAIRE FOR PROSPECTIVE JURORS
(To be filled out in your own handwriting, using ink)

1. Full name (print) Mr. }
Mrs. }
Miss } _____
(First) (Middle) (Last)
2. Residence address _____ Residence phone _____
3. Are you married? _____ If married, what is husband's or wife's name? _____
(First) (Middle)
4. What is your occupation? _____
5. Name of employer or business _____
6. Business address _____ Business phone _____
7. What other business, if any, have you been engaged in during the past two years? _____
8. If married, what is husband's or wife's occupation? _____
9. Are you a citizen of the United States? _____
10. Place of birth _____ Date of birth _____
(Month, Day, Year)
11. If you are not American-born, where and when were you naturalized? _____
12. Do you claim residence outside of the District of Columbia? _____
 (a) If you claim residence outside the District of Columbia, do you maintain a home where you claim residence? _____
 (b) How much time each year do you spend there? _____
13. How long have you lived in the District of Columbia? _____
14. Do you own real estate in the District of Columbia? _____
 (a) Where is the property located? _____
 (b) Is the title to the property in your name? _____
15. Have you ever been convicted in a State, territorial, or federal court of record, or court of the District, of a crime punishable by imprisonment for more than one year? _____
 (a) If so, give date, place and nature of each conviction _____
 (b) Have your civil rights been restored by pardon or amnesty? _____

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16. Have you ever been arrested in the District of Columbia or elsewhere? _____ If so, give date, place and nature of each offense _____

✓ 17. Are you a party to any criminal or civil proceedings now pending in any court? _____

18. Are you a public officer in the executive, legislative, or judicial branch of the Government of the United States or the Government of the District of Columbia? _____ If so, state position occupied _____

19. Are you an officer or enlisted person in active service of the Army, Navy, Marine Corps, Air Force or Coast Guard of the United States? _____

20. Are you a member of the Police or Fire Departments of the United States or the District of Columbia? _____ If so, in what capacity? _____

21. Are you a counselor or attorney at law engaged in actual practice? _____

22. Are you a minister of the gospel or clergyman of any denomination? _____

23. Are you a practicing physician or surgeon? _____

24. Are you a keeper of a charitable institution created by or under the laws relating to the District of Columbia? _____

25. Are you a captain or master of, or employed on, a vessel navigating the waters of the District of Columbia? _____

26. Are you physically able to serve as a juror? _____

✓ 27. Have you ever been treated for mental illness? _____

✓ 28. Women are not compelled to serve on the jury. Will you serve? _____

✓ 29. Have you any views opposed to the form of government established by the U. S. Constitution? _____

30. Have you ever served as a juror in any Court in the District of Columbia? _____ If so, in which Court? _____ Approximate date _____

31. If your name has been changed since last service, what was your former name? _____

32. Do you read, write, speak and understand the English language? _____

33. Have you required help in understanding this questionnaire? _____
Has it been completed in your own handwriting? _____

34. What is the extent of your education? Elementary _____ High School _____
College _____

35. If there is anything that would affect your ability to serve, describe briefly on a separate sheet.

I solemnly affirm that the answers to the foregoing questions are true and correct to the best of my knowledge and belief.

_____, 19____
(Date)

(Signature)

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AFFIDAVIT

OF

EDWARD G. BLISS

Jury Commissioner for the
District of ColumbiaCITY OF WASHINGTON }
DISTRICT OF COLUMBIA } ss:

I, EDWARD G. BLISS, being duly sworn do hereby state that I am a Jury Commissioner for the District of Columbia and that I am Secretary of said Jury Commission.

I do further state that all prospective jurors chosen for service as jurors in the District of Columbia are selected by the Jury Commission for the District of Columbia. As part of the procedure followed by the Jury Commission in determining the ability or inability of any prospective juror to serve upon a jury panel in the District of Columbia, the Jury Commission submits a detailed questionnaire consisting of thirty-five questions to each prospective juror. The questionnaire, as used, aids in securing a representative cross-section of the community capable of rendering efficient and intelligent jury service and excludes no groups from such service.

I do further state that question four of the questionnaire inquires as to the occupation of the prospective juror. No person is excluded from jury service on the basis of his answer to this question unless his answer places him within a category of employment which is statutory exempt. The information acquired by this question is used by the Commissioners as a supplement to that provided by question thirty-four—extent of formal education—to determine if a person who has little formal education has demonstrated by his occupational performance that he is nevertheless capable of rendering efficient and intelligent jury service.

I do further state that question sixteen of the questionnaire inquires as to the existence and nature of past

arrests of the prospective juror. If the information supplied in answer to the question indicates, by the nature and number of arrests, particularly if occurrences are recent, that the prospective juror is unlikely to render efficient jury service or is not an upright citizen, the prospective juror would be excluded.

In instances where the record seems to need further explanation the prospective juror would be interviewed personally and a conclusion reached as to inclusion or exclusion.

I do further state that question twenty-seven of the questionnaire inquires as to past treatment for mental illness of the prospective juror. This information is needed by the Commission to determine if the prospective juror is statutorily disqualified from service as one incapable of rendering efficient jury service by virtue of mental infirmity. Persons giving an affirmative answer to this question are called in for a personal interview and as a result of such interview they are either accepted or excluded as prospective jurors.

I do further state that question twenty-nine inquires as to whether the prospective juror has any views opposed to the form of Government established by the United States Constitution. Those answering affirmatively are called in for a personal interview to determine if the views opposed to the government established by the Constitution that they possess would render them incapable of providing efficient jury service. However, no one has ever been excluded from the jury lists because of an affirmative answer to this question.

I do further state that question thirty of the questionnaire inquires as to previous jury service in the District of Columbia. The information gained by this question is used to determine if the prospective juror is disqualified under the United States Code because of previous service within the

last year. Also as matter of practice, to broaden the base of selected jurors a five year interval is now in effect.

I do further state that question thirty-four of the questionnaire inquires as to the extent of formal education of the prospective juror. No person is excluded from jury service solely on the basis of his answer to this question. If, however, a prospective juror has received little formal education, other information, such as his employment record, is gone over to determine if he is capable of rendering efficient and intelligent jury service.

No group or class of persons other than those excluded specifically by the D. C. Code, is excluded from jury service in the District of Columbia and that the information secured by use of the questionnaire is necessary for the efficient supply of qualified jurors in the District of Columbia.

/s/ EDWARD G. BLISS
Jury Commissioner
District of Columbia

Subscribed to and sworn before me this 21st day of November, 1966.

HARRIET ROBISON
Notary Public, D. C.

My commission expires May 14, 1970.

JOINT APPENDIX

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21154

ROBERT G. BAKER, *Appellant*

v.

UNITED STATES OF AMERICA

Appeal From Judgment of the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 11 1968

Volume II
(Pages 388 to 808)

Nat'l. J. Paulson
CLERK



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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21154

ROBERT G. BAKER, *Appellant*

v.

UNITED STATES OF AMERICA

Appeal From Judgment of the United States District Court
for the District of Columbia

JOINT APPENDIX

Volume II

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS
OF JANUARY 9, 1967

4 Mr. Williams: Judge, we have a motion which we would like to raise this morning and I would furnish counsel with copies of it. I would have had it to counsel sooner except it was still in the process of being written as of Saturday when I last communicated with the Court. I suppose the original should be filed, your Honor, so I can give it to you at this moment.

The Court: All right. What is the nature of the motion?

Mr. Williams: The motion, your Honor, is a motion to strike the jury panel.

The Court: Oh, yes.

Mr. Williams: And the reason which motivated us to explore into this jury problem was the disclosure in our previous pre-trial meeting that there had been additional veniremen called—

The Court: Right.

Mr. Williams: —I believe on Wednesday last, and we explored into the propriety of calling an array of veniremen over and above those who had been summoned in the ordinary course of business for January duty and it was our conclusion then, if the Court please, that that array was improperly called and I would call your Honor's attention to the part of our memorandum which begins at page 13, and I might say to you for your own convenience in reading this, that the first part of the memorandum is addressed to the entire array of jurymen summoned for service in January, and the last part of the memorandum beginning at page 13 is addressed specifically to the additional array of veniremen who were called and sworn in, I believe, on Wednesday last.

• • • • •
10 The Court: Let me say this to you, Ed. When Mr. Taft told me this motion was in your mind—he was in to see me at your request about noon, I think

11 it was, on Saturday—I was able to get hold of Judge Bryant before whom a similar motion is pending, a motion in brief by Mr. Friedman for the defendant and by the Department of Justice for the Government.

I spent several hours with Judge Bryant on Saturday afternoon. Fortunately, I was able to find him. So, I am familiar with these points generally and Judge Bryant's views which were, I think, the result of considerable study on his part.

I think, No. 1, your motion is untimely except in so far as the recent selection of jurors is concerned. I think the other points should have been raised with your motions which should have been filed sometime ago and nothing has changed so far as the selection of jurors is concerned in the interim.

I would not deny it solely for the reason I think it is untimely but I do think it is the kind of motion that should have been brought to the Court's attention before the advent of the trial.

So far as the additional panel is concerned, it was first brought to my attention by Judge Sirica that we should have some additional jurors. He pointed out that a number had been excused in the previous panel. Some could not be located, and that we should seek to get in a reservoir of jurors so that our courts could function on this day
 12 when we will have the problem of getting jurors who are willing to sit for a long case under the restrictions that will be imposed by the Court.

So, it was with that in mind that we brought in these additional jurymen. I understand your point with respect to them. I think that the ten-day period provided by statute for jurymen generally is for their convenience and protection. I fail to see how the defendant is in any wise prejudiced by the shortening of that period and I would call your attention to the Code which permits the augmentation of the sitting panel if the situation develops where any members of the jury panel have been excused and found not qualified for service, and so forth.

So, I think at this time, since I am familiar with these points as a result of my study of Mr. Friedman's brief, the Government's brief, and my conversations with Judge Bryant, and the fact that I think the motion is untimely, I will at this time deny it. But it is of record.

* * * * *

66 The Court: Very well.

One moment, please. I think, Mr. Williams, the Court should exclude or excuse employees of the Department of Justice and the gentleman who is employed by the FBI, though he works solely on fingerprints.

* * * * *

80 Now, ladies and gentlemen, I want to talk to you something about the nature of this case as it affects you individually or as it may affect you individually as jurymen.

The trial of this case may last as long as two months or two and a half months.

Of course, we hope it will last for a shorter period of time but we do not know. We can only estimate. And this might disrupt your family and business. It might interfere with your giving these proceedings your undivided and undistracted attention.

The Court realizes that a considerable burden and inconvenience will be imposed on the jurymen who are selected. The Court expresses the hope that members of the panel will realize how important this jury service is. Both the accused and the Government are entitled to have this case tried by a fair and impartial jury, the members of which are able to give their undivided and undistracted attention to the trial.

The jury should be a fair cross section of the community. It is the jury that will have the sole and exclusive function and responsibility of judging the facts. The jury alone will determine the weight, the effect and the value of the evidence and the credibility of the witnesses.

81 One of the greatest Justices in the history of our country, Mr. Justice Holmes, expressed the un-deviating rule for the guidance of all of us in the trial of criminal cases as follows:

“The theory of our system is that the conclusions to be reached in a case will be introduced only by the evidence and argument in open court, and not by any outside influence, whether of private talk or public print.”

Along with this important principle we must give full effect to another equally important guideline recently stated by the Supreme Court. This Court, the quotation says, has therefore been unwilling to place any direct limitations on the freedom traditionally exercised by the news media, for what transpires in the Court is public property. I recognize there will be extensive coverage of this important case by the papers, by the radio and the television industry. That is in accordance with the traditions of our free society and the principles of our constitution.

But, I must also take note of the recent decision of the support in the Shepard case wherein the conviction was set aside because the jury was not separated or shielded from the extensive publicity that attended that case.

Accordingly, I feel that I have no alternative in this case but to take steps at this time to prevent the possibility that the jury may be influenced by what they hear
82 or what they read concerning the case outside the court room.

Therefore, I have, with reluctance, come to the conclusion that the jury in this case will be sequestered. This means the jury will be housed, during the trial, in that portion of the Court House which was built for that purpose.

At this time I am going to give any members of the panel the opportunity of coming forward individually and of telling the Court the reasons why they wish to be excused, if they do, either because of the expected length of the trial, or because the jury will be sequestered.

Yes, sir, you may step up. Perhaps if you come to the lectern.

Deputy Clerk: Will you all form a line on your right and come over to the lectern.

Mr. Harriston: William M. Harriston. No. 152.

Your Honor, I may say, my reason might not be too good but you said the jury would be sequestered.

The Court: Sequestered, yes, sir.

Mr. Harriston: That is the reason, sir.

The Court: I am going to ask the ladies and gentlemen who have been invited here both as panelists and as members of the press to refrain from expressing views by laughter or otherwise. We are trying very seriously
83 to accommodate members of the panel and see to it that we retain a fair and impartial panel to try this case and I would ask your cooperation.

Now, what is your employment, sir?

Mr. Harriston: I am a mail carrier, your Honor.

The Court: Well, the Court, you know, can see to it, Mr. Harriston, certainly concerning those of you who are employed by the Government, that nothing transpires as a result of your jury service which, in any way adversely affects you at the present or in the future.

I am sure that the Postmaster, Mr. Bell, will cooperate in seeing that that is carried out. I realize that this is an imposition in a way, but it is the only way that this case, in my judgment, can be properly tried.

So, unless you have something additional to say, I am going to ask you to have a seat in the court room.

Mr. Harriston: No, sir.

Mr. Simpson: No. 40, the name is James D. Simpson.

With your permission, may I approach the Bench?

The Court: Certainly.

Mr. Simpson: My understanding that, because of a bad check I think I am to be called by Captain Chapman today. I was notified for my attorney and I do not have the money.

For that reason, I don't think I could do it.

84 The Court: I think we should excuse you and I hope that things work out all right.

Deputy Clerk: That is No. 40.

The Court: I take it you have no objection.

Mr. Bittman: No objection.

Mr. Williams: No objection.

While we are here, I thought it was your intention to excuse the Internal Revenue employees as well as those of the Department of Justice. There was an Internal Revenue Service, too.

The Court: She should probably be excused. She is retired.

Mr. Williams: No, there was an active one. I can give you her number.

Mr. Bittman: I have no objection.

Mr. Williams: No. 117, Ethel L. Williamson.

Deputy Clerk: She works for Internal Revenue. You want her excused.

Mr. Williams: I think so. She is employed now by the IRS. She should be excused.

The Court: If she is.

Mr. Williams: She is.

The Court: We will take care of that.

(In open court.)

The Court: Is Mrs. Williamson in Court, No. 117?

85 Mrs. Williamson: Yes.

The Court: Where are you, Mrs. Williamson?

I think, since you are employed by Internal Revenue, at this time the Court will excuse you. The Court does appreciate your coming down and also appreciates your keeping your place at this time.

Thank you.

The Court: Yes, Ma'am.

Mrs. Tompkins: No. 126, Mrs. Rosalie Tompkins.

I wish to be excused because of the sequestered prior of time. Maybe two to three months.

The Court: What is your occupation?

Mrs. Tompkins: I am a data processing officer in the Agency for International Development. I have two reasons.

The Court: That is a Government agency, is it not, like the Post Office?

Mrs. Tompkins: Yes, under the State Department. I have two reasons. One, my work and one I don't think my husband appreciates my being away so long.

The Court: I understand we have to think something about the husbands in this life. It is always helpful if we do.

Mrs. Tompkins: I do not think he would appreciate it.

The Court: Well, Mrs. Tompkins, I am going to take this under advisement. You have a seat in the court
86 room. I will let you know.

Mrs. Tompkins: Thank you, your Honor.

Mr. Roberts: No. 5, Lewis Roberts.

Under the financial circumstances, for the case to go along two or three months, I do not think I can afford it right now because I have two daughters in college and I have to take care of that and there is no one home but my wife.

To be locked in, she is kind of afraid to stay home at night by herself. I am employed by the D. C. Transit.

The Court: What is your employment at D. C. Transit?

Mr. Roberts: Bus operator. I would take a tremendous loss.

The Court: I am sure we could persuade Mr. Chalk who is a public-spirited citizen, to deal with you as fairly as the United States Government deals with its employees who are selected, namely, that you would lose no money by reason of this service.

Of course, that is assuming that we must do this. And unless I can do that, I would not expect you to lose money.

So, if you will have a seat in Court, Mr. Roberts, perhaps that is a matter we can take up subsequently. I appreciate your telling the Court these things.

87 Mr. Jackson: No. 156.

The Court: Mr. Jackson.

Mr. Jackson: Yes, sir.

I appreciate my responsibility, Judge, your Honor, but owing to the fact that I work on an hourly basis at the Washington Terminal, I could not possibly afford to make the sacrifice. I would not mind making some sacrifice but I feel that would be rather too much.

The Court: Well, Mr. Jackson, unless I can be assured that your income will not suffer by reason of this service, I will excuse you, but I am going to ask you to take a seat in the court room until we can make a determination on that.

Miss Cozzolina: No. 167. My name is Clementine J. Cozzolina. I have to go through an operation in the near future. I would like to—that is for my sister, and I would like to be there when that takes place.

The Court: You have an operation planned.

Miss Cozzolina: My sister. My sister is supposed to go under an operation in the near future and I would like to be with her at the time.

The Court: I will excuse you.

Thank you very much.

Mr. Whitaker: No. 141. My name is Arthur Whitaker.

88 My agency had not anticipated that I would be called for the Bobby Baker case, or for the length of service you would anticipate being here.

The Court: What is your agency?

Mr. Whitaker: Central Intelligence, sir.

The Court: I see.

Mr. Whitaker: In an office of four, we have been reduced to one and they had anticipated that I would be there on Saturdays to help out, at that late hour.

The Court: Do you know Mr. Houston, the General Counsel?

Mr. Whitaker: No, sir, I do not. They have not interfered at this point because they did not feel we would be here.

The Court: Well, Mr. Whitaker, I am going to ask you to have a seat and I will check with your agency. I do not want anyone to be prejudiced by this service but you know, we all have to utilize our opportunities to serve in an important matter like this when we can and I am sure the Government would not want to interfere any more than Mr. Chalk would want to interfere but I want that assurance before I ask you to serve, so have a seat in the Court room.

Mr. White: Bernard L. White. No. 108.

I have two reasons to offer. One is that I have two children, a teen-ager, a daughter and a teenage son
89 and my wife works at night and I work during the day. In this way someone is at home at all times with the children, and this case, therefore, would work a hardship.

The second is that I am resigning one job effective the 14th of this month.

The Court: You have convinced me, sir.

I will excuse you. I am sorry you cannot be with us. Good luck to you.

Thank you.

Miss Thornton: My number is 107, Cecilia Thornton.

The Court: You are the lady who worked for the Internal Revenue for 35 years. I think Mr. Williams would probably rest easier if I excused you without further explanation, and I will.

Miss Thornton: Thank you, your Honor.

Mrs. Stol: No. 148, Mrs. Stol.

I would like to be excused. I was willing to serve. I think it is the responsibility of citizens but if we have to stay here for that long a period of time, I feel it would be very hard then on my husband. He is not young and he is not terribly well, and I think I should be near him to make things easier for him.

The Court: I will excuse you.

Mr. Williams: 147, was that?

Deputy Clerk: 148.

90 Mrs. LaPorte: No. 123. Mrs. Gladys LaPorte.

Because of my young age and the medication required, I feel that I would not be able to remain here.

The Court: You feel that under the circumstances—

Mrs. LaPorte: My health.

The Court: Your health would not be helped by this situation?

Mrs. LaPorte: Yes.

The Court: I will excuse you.

Mr. Williams: Excuse me.

Deputy Clerk: No. 123.

Miss Thompson: No. 80, Miss Julia C. Thompson. I am willing to serve on the basis of the extent of the case and the sequestering, I question whether I will be able to, because it will quite seriously interfere with my work.

The Court: Are you the Chief person that carries out legislative activities?

Miss Thompson: Here in the Washington office and I have an assistant.

The Court: Could your assistant carry on in your absence, Miss Thompson?

Miss Thompson: She can do part of the work but she cannot do all of it. We do have a conference planned
91 for March, which will entail a considerable amount of work.

The Court: I think, in view of the fact that you are the head of this particular segment of the work of the International Nurses Association, that I will excuse you.

Miss Thompson: Thank you very much.

I would be glad to serve another time.

The Court: Thank you.

Mrs. Norton: Lorraine Norton, No. 116. I have two jobs and I could arrange to be away from both of them but I have heavy family responsibility. Two aged parents that are entirely dependent upon me to take care of them.

The Court: I think, under those circumstances, I should excuse you.

Mrs. Pierce: No. 137, Jean Pierce. I have full-time employment with the Washington Post. I am Assistant to the Credit Manager. My being gone full time for that long a period would create a real hardship in the office but aside from that, of course, I have a husband and a step-daughter that visits us twice a week and I, my husband would have a fit, he would starve to death, I am fearful, if I did not get to cook for him.

The Court: It might be good for his waistline.

Mrs. Pierce: No, he is quite slender.

The Court: Is there no one, Mrs. Pierce, that could do your work at Washington Post in your absence?

92 Mrs. Pierce: Well, there are, of course, there is a staff of people but I am assistant to the credit manager and he, of course, does rely on me and my intention, of course, was to have gone to work after I left here in the evening and that way, of course, I could keep up with some of the backlog and equally important is my husband. My domestic situation is such that the whole responsibility is upon me to take care of the household.

I know it is not a very good excuse. Everyone has to be inconvenienced in these things.

The Court: You feel that you have special standing because of your job and the fact that you would be expected to do some night work?

Mrs. Pierce: Well, I would be expected to go in when I left here and try to keep up with my work.

The Court: I am going to ask you to have a seat in the Court room and I will think about it. I will make notes and let you know.

Mrs. Harper: No. 12, Donna Harper.

I have an allergy to so many different things. I have just had a spell of bronchial asthma due to that, so I would rather not be away from home for any length of time on that account.

93 There are so many things I am allergic to so that I should not—and the doctor has not pinned them down as yet.

The Court: I think under the circumstances, you should be excused.

Mrs. Williams: Delores Williams, No. 85.

I have four children, your Honor, who need me at night.

The Court: Mrs. Williams, you are a very fortunate person in having four children and the Court is not going to take you away from your four children. You will be excused.

Miss Dignan: No. 87, Margaret Dignan.

I work in private industry. They would be willing to excuse me from 4 to six weeks but since the case will carry on much longer, I am afraid they would not agree to that.

The Court: Who is your employer?

Miss Dignan: I work for the John Haas Company, 815 Connecticut Avenue. We are importers and exporters. I think they would be disturbed if I were gone that long.

The Court: What is your work at the Haas firm?

Miss Dignan: I am an Executive Secretary to the President, and he is away for about three weeks and that is why I was able, I thought I could do this while
94 he was away.

The Court: Yes.

Well, perhaps you had better serve on some other case.

Miss Dignan: I do object, myself, but I do not like to put everybody else to so much inconvenience.

I had sort of planned to go in several agencies a week and see that things were kept up.

The Court: Well, Mrs. Dignan, I am going to ask you to have a seat in Court and I will think about your case and let you know.

Mrs. Thomas: No. 33, Catherine Thomas.

The Court: No. what?

Mrs. Thomas: No. 33.

My name is Catherine Thomas. I have a husband who is under the doctor's care and I do not feel that I can be away that length of time.

The Court: You feel that your husband's condition is such that it would seriously and adversely affect him?

Mrs. Thomas: Yes, he would be there alone.

The Court: Affect him if you were not there to help him?

Mrs. Thomas: Yes.

The Court: Very well, I will excuse you.

95 Mr. Endler: Oscar Endler, No. 39.

I support an elderly mother at home. She is partially blind and I almost have to get home in the evenings.

The Court: Very well, sir.

Now, will you return to the jury lounge. All people who are being excused just from this case.

Mrs. Frazier: No. 6, Marie Frazier, my supervisor would not want to excuse me that length of time to serve.

The Court: Miss Frazier, for what agency do you work?

Mrs. Frazier: I work at Andrews Air Force Base in the Dental Clinic.

I am a Government employee.

The Court: What work do you do at Andrews?

Mrs. Frazier: I am a dentist hygienist.

The Court: Who is your supervisor out there?

Mrs. Frazier: Colonel Frank Samaha.

The Court: Colonel Frank Samaha. Is that S-a-m-a-h-a?

Mrs. Frazier: Yes, it is.

The Court: I am going to ask you to have a seat in the court and we will talk to Colonel Samaha and if he knows the situation, I think he will look upon it with a liberal view.

Thank you.

96 Mr. Judge: No. 142, Edward Judge. Your Honor,

I am in the process of buying a home and I think that this will be a great inconvenience here as I may lose the purchase.

The Court: Have you been in negotiation for sometime?

Mr. Judge: No, I found the home yesterday and I was to put a deposit on it this afternoon.

The Court: This does seem to be singularly inopportune so far as you are concerned.

Mr. Judge: Yes, it does.

The Court: All right, sir.

I will ask you to return to the jury lounge on the fourth floor.

Mr. Judge: Thank you, sir.

Mrs. Gingrich: No. 113, Margaret Gingrich. I was on the jury here in the District Court in September and I have promised to stay with my grandchild for a week the latter part of February.

The Court: You were on the jury in September, this past September?

Mrs. Gingrich: Yes, sir.

The Court: You should be excused.

I think the machine must have slipped because we do not wish to call jurors back that soon.

97 Mrs. Gingrich: I put that on the form I filled out, too.

The Court: Thank you.

Mr. Leach: No. 44, Stacey A. Leach.

I work for a private company and, for a long time I do not think they would pay me for being away.

The Court: What is your company, Mr. Leach?

Mr. Leach: Logan Motor Company.

The Court: That is where I send my Ford.

Mr. Leach: Yes.

The Court: They seem to do a pretty good job.

Mr. Leach: Another thing, Judge, when I was coming down for jury duty, I did not know this case and so my son knew more about it than I did. He made certain remarks to me. I do not know whether it would affect me or not.

The Court: Mr. Leach, I am glad to run across one parent who pays some attention to what his son says. My son does not feel I pay any attention to what he says.

Mr. Leach: I paid attention to him. He made a suggestion where he knew the case and I did not.

The Court: Do you feel your son's convictions respecting this case are so strong and would be entertained by

you to such a degree that you could not fairly and impartially judge this case if you were selected, based
 98 solely on the evidence you hear here in Court and the instructions that the Court would give you?

Mr. Leach: I do not think so.

The Court: You think you could judge it or you could not judge it?

Mr. Leach: I think I could.

The Court: But you have concern respecting Mr. Logan, is that right?

Mr. Leach: Yes, sir.

The Court: Well, as the Court told some of the other jurymen, the Court does not want any of you to suffer by reason of this situation. And unless I can be assured that you will not lose anything financially, I am not going to ask you to serve but I will ask you to have a seat in the court room for the time being.

Mr. Leach: In the court room?

The Court: Yes.

Mr. McIntosh: John McIntosh, I would like to approach the bench? No. 114.

The Court: Yes.

(At the Bench)

Mr. McIntosh: My reason is very personal. I work for the National Geographic Society as a professional. My boss is being moved out as of the first of February. I am
 99 one of two people in the office who will be considered for a job of second in the office in the period of time between now and February and I think this will place them in a terrible disadvantage in the next 10 to 15 years in the organization. If it would be a couple of days or something it would be different. Under the circumstances, I will be ruined. I will not lose any money but I will lose the position.

The Court: I am going to ask you to return to the jury lounge. You can be assigned to other cases, but I think

that is a sufficient reason, don't you think so, Mr. Williams?

Mr. Williams: Yes.

Mr. Bittman: Yes, your Honor.

(Open Court.)

Mr. Kelly: Cato A. Kelly, No. 105.

I am under the care of both an internist and an ophthalmologist. I have an operation on my eye and chronic heart condition that requires constant care.

The Court: Mr. Kelly, I sympathize with you. I do not think we ought to impose on you to the extent of serving on this panel at this time. I hope your health will improve.

Mr. Kelly: Thank you.

(Open court.)

Mrs. King: No. 171, Mrs. Dorothy King. In reference to the housing of the jurors would we have to stay at night?

The Court: Yes.

Mrs. King: And on week ends.

The Court: Yes.

100 Mrs. King: In reference to that I would like to state that on my job there is only three employees in the office and one supervisor. The supervisor is now on jury duty. I am the oldest employee in the office and each of us has two analysts that we work for. They have asked me if I am selected, would I come in and work in the evenings and on Saturday and if I am selected, I can not do that. And no one would do my work.

The Court: I will excuse you from this case. You return to the jury lounge. I think when you have got an office of four people and one is already on the jury and you have been selected, your office is entitled to that consideration.

Mrs. Weiss: Miss Helena M. Weiss, No. 129.

I feel that it would pose a difficulty on my office for me to be completely—

The Court: I am sorry, I am not getting what you say.

Mrs. Weiss: I feel that it would impose a difficulty on

my office for me to be completely away from two to two and a half months.

The Court: What is your office?

Mrs. Weiss: I am in the Smithsonian Institution, the Registrar, I am in charge of an office. And I have a little assistant who can take over completely. I have
101 someone who can act part time but I thought I would be able to go in when I am dismissed from the jury on days off and I could in that way keep the office—

The Court: I think I will ask you to return to the jury lounge.

Mrs. Weiss: Thank you, sir.

Mrs. Ryan: No. 136, Mrs. Josephine Ryan. May I discuss this at the Bench, your Honor?

The Court: Yes.

(At the Bench)

Mrs. Ryan: Whereas, I do not know Mr. Williams, I was very much involved. I was Paul Connolly's secretary for several years. There is so much involved when you brought up the business of investigators, I thought I might be biased.

Mr. Williams: I have never met Mrs. Ryan.

Mrs. Ryan: I did not bring it up before.

I am involved—so many years. I have spent so many years in Court. Being with Paul R. Connolly and being involved with him and investigators in the District Attorney's office and FBI and so on.

The Court: I think, Mrs. Ryan, you should be excused.

Mrs. Ryan: One other thing about being excused. I am involved with a big dental job and I promised my dentist I would start in on the 15th of January.

102 The Court: I will excuse you from this case and I will ask you to take up the final excuse in the jury lounge.

Mrs. Ryan: I would like to serve. I have been called several times but every time I have been challenged.

The Court: I think it would be an interesting experience.

(In Open Court)

Mrs. Frick: Lillie W. Frick, No. 140.

May I approach the Bench?

The Court: Yes, Mrs. Frick.

(At the Bench)

Mrs. Frick: I have an alcoholic problem. I work every day, too, and if my husband finds I am not coming home at night, I cannot even go away on vacation or anything, because he will not eat. I have animals and when I get home they are not fed and house is a wreck.

The Court: I understand your situation but you return to the jury lounge where they can give you another assignment.

(In open court)

103 Mrs. Mack: Mrs. Elizabeth Mack, No. 11.

The Court: Yes, Mrs. Mack.

Mrs. Mack: Due to the fact that the jurors might be required to remain in the evening, I beg to be excused. My husband is going through intensive medical treatment now and on a special diet and I could not remain away at night.

The Court: The Court will excuse you from service in this case and ask you to return to the jurors' lounge on the 4th floor.

Miss Elosser: No. 31, Edna P. Elosser. I am a retired government employee. I am perfectly willing to serve on the jury but I do not think my physical condition is such that I should stay here all that time at night and be impounded here. But I am able to serve during the day.

The Court: Under those circumstances, I think I will ask you to return to the jury lounge on the 4th floor where they can give you other assignments.

Mrs. Gilkes: No. 138, Mrs. Gilkes. I work in a very small personnel office. In fact, there is only three of us and we have over 600 employees to serve. At this time it would be a hardship for me to serve. I had promised my supervisor that I would come in every evening that I could and it is a rule of our agency if you can get
104 back in time, to work one hour, that you should come in so I would like to.

The Court: Your agency?

Mrs. Gilkes: National Capital Housing Authority. We are very busy at this time, taking on employees.

The Court: Of course, Mrs. Gilkes, all of the Government is supposed to be busy.

Mrs. Gilkes: We are understaffed.

The Court: And I have always heard Government agencies say they are understaffed. I have never heard any admit they had too many people. Who is your supervisor?

Mrs. Gilkes: Miss Mary Ann Anderson.

The Court: How do you reach the lady on the telephone?

Mrs. Gilkes: Our number is 382-2564.

The Court: Thank you.

If we need you, we may talk to Mrs. Anderson so that you will not lose anything by reason of this service.

I do not want anybody to be prejudiced in their financially or otherwise by reason of this service.

Mrs. Gilkes: Also, your Honor, my mother is elderly and I would not like to be away from her for a month or two months, not being able to go by to visit her and help to do anything that I need to do.

105 The Court: Do you have any brothers or sisters who could help?

Mrs. Gilkes: I do.

The Court: I am going to ask you to have a seat in court and we will see how we can make out. We do need to get a good cross section of the community, a fair and impartial jury, and we need to call on you but if we do not, of course, you can serve on the other panel.

Mrs. Gilkes: All right.

The Court: Thank you.

Mrs. Yates: No. 54, Doris Yates.

The Court: Now, Mrs. Yates, speak up so both counsel at that end of the Court room and counsel over here can hear what you have to say.

Mrs. Yates: I have three sons, your Honor, whom I think would suffer from my staying overnight. I also have a father who has suffered a stroke a year ago and now is completely dependent upon me.

The Court: Mrs. Yates, under that circumstance, I am going to ask you to return to the jury lounge on the 4th floor.

Mrs. Yates: Thank you, sir.

Mr. Van Rossum: No. 165, Van Rossum.

I sympathize with your decision to sequester the
106 jury but this would impose a burden on my wife, taking care of a nine-year old, a six-year old and a three-year old without my assistance. And she does not drive and I am doing work on the house at this time. Things are kind of broken up in the kitchen and the downstairs.

The Court: I think I understand, Mr. Van Rossum.

I am going to ask you to return to the jury lounge on the 4th floor.

Mrs. Johnson: Helen Johnson, No. 94.

I would like to be excused on the basis that I have two small sons ages 4 and 2 who are under care of my mother-in-law who is under medical attention during the day, and they need me at night.

The Court: I think you, too, should return to the jury lounge.

Miss Woodruff: Miss Sara Woodruff, No. 131.

The Court: Yes, Miss Woodruff.

Miss Woodruff: I would like to serve very much on this jury, but I have two problems. One which my mother might be able to take care of, but I moved into an apart-

ment a couple of months or so ago and I have since received a rent increase in which I do not agree with, and I have about a month's time in which to find out, to inquire into this and see whether this was—you know, whether it was eligible or not. Now then I need time to do this.

107 The Court: You are involved, shall we say, in negotiations that you think only you can carry out and it is very important.

Mrs. Woodruff: Yes.

The Court: I will ask you to return to the jury lounge on the 4th floor.

Mr. Jones: Edward R. Jones, No. 20.

Due to the length of this case, I think it would be an unusual burden on the family. We have two small daughters and during the day we have a baby sitter and most of the time I get home before the wife does so if there is, if it is possible, that I could be excused from this particular case, I would appreciate that, your Honor.

The Court: Very well, the 4th floor lounge.

Mrs. Roberts: Annie Roberts, No. 149. I have three children who are enrolled in school who will need me in the afternoon and evenings to assist them in homework and prepare them for school the next day, so I ask to be excused from this case.

The Court: Very well, Mrs. Roberts. 4th floor lounge.

Mr. Ng: Joseph Ng. No. 48. I would like to be excused since we are compelled to stay here at night.

108 The Court: Beg your pardon?

Mr. Ng: I ask to be excused since we are going to stay at night. I have three little kids and I have to take my daughter to school every morning and my wife takes care of the other two at home and one is not feeling well today and I am afraid he might need my assistance in the evening.

The Court: I am afraid under those circumstances I will ask you to then return to the jury lounge on the 4th floor.

Mr. Ng: Thank you.

Mr. Davis: Glenwood Davis, No. 36. I would like to be excused because I have illness in the family. I cannot be away from home at night. On this particular case at night.

The Court: All right, sir. Return to the jury lounge on the 4th floor.

Mr. Pumphrey: William L. Pumphrey, 169.

Due to the length of this case, I think it would be imposition on my employer to serve on this particular case. Also I attend college level courses at night.

The Court: You are going to college at night?

Mr. Pumphrey: Through the bank, sir, the bank courses at night. I work for the National Bank of Washington.

109 The Court: And you are taking courses at night in college?

Mr. Pumphrey: Yes, sir.

The Court: We do not want to interfere with your education, sir. I will excuse you. Return to the jury lounge on the 4th floor.

Mrs. Addison: Carrie Addison, No. 91.

The Court: Yes, Mrs. Addison.

Mrs. Addison: Since a juror would have to be confined, I would like to be excused from this case.

The Court: Any special reason, Miss Addison, other than the fact that this jury would be sequestered?

Mrs. Addison: I would not like to be away from home that long.

The Court: Do you have people at home who need your help?

Mrs. Addison: We are all adults. We are all adults and no one particularly dependent.

The Court: I am sorry.

Mrs. Addison: No one particularly dependent.

The Court: Well, suppose you have a seat in the court room, Mrs. Addison. We will see how we make out with the selection of the panel of this jury.

110 Mrs. Pearl Tatum: No. 79, my name is Pearl Tatum.

Mrs. Tatum: Yes. I have three minor children and a husband that I feel my being away from them for the length of this particular jury would, would impose a hardship on them.

The Court: I think three minor children is a pretty good excuse. I will ask you to return to the jury lounge on the 4th floor.

Mrs. Smith: No. 82, Mrs. Roberta Smith. I have a clinic appointment at Walter Reed next Monday, which was made two months ago when I got out of Walter Reed as a patient.

The Court: You have convinced me.

Mrs. Smith: And I want to be excused for that.

The Court: Will you return to the jury lounge. They can arrange for the next assignment.

Mrs. Booth: Ruth Booth, 43.

My name is Ruth Booth. I have a little boy three years old who is in nursery school and I do not have anyone to take care of him when I am not there. So that is why I wish to be excused.

111 The Court: I will excuse you.

Return to the jury lounge, please.

Mr. Seward: Coleman Seward, 86. May I approach the Bench?

(At the Bench)

Mr. Seward: We have one son, 9 and my wife and I have been trying to have another child since. Last year we lost the baby because of miscarriage. My wife is now pregnant under very strict physical conditions. That she cannot do a lot of things. And I do not want to upset her and I do not want to be away from her particularly a long length of time. I am willing to serve on some other case than the one which requires me to be away from her.

The Court: Mr. Seward, I think that is a very good

reason. I am going to excuse you and ask you to return to the jury lounge. They can give you another assignment.

(Open court)

Mrs. Sherman: No. 67, Emma Sherman.

I do not want to be away from night and day. Plus I am a retired cardiac patient and I think I should not stay away from home with my medicine, very long.

The Court: Are you a cardiac patient?

Mrs. Sherman: Yes, sir.

112 The Court: Well, I certainly do not want to impose that burden on you.

Mrs. Sherman: I would like to be able to serve in some other court.

The Court: I will excuse you and ask you to return to the jury lounge.

Mr. Tyson: Leon Tyson, No. 153. May I approach the Bench?

The Court: Yes.

(At the Bench)

Mr. Tyson: We have been having trouble in the neighborhood where we live. I would want my wife to be not alone. I have no objection to serving in the day but I would not want to be away at night. We have been having trouble in the neighborhood. I do not know whether it is jealousy or not. Young boys are hanging around the house. We have had to change the phone. I would not mind serving during the day.

The Court: Mr. Tyson, I recognize that situation. I want to ask you to return to the jury lounge on the 4th floor.

(In Open Court)

Mr. Hendricks: Hubert W. Hendricks, Jr. No. 22.

113 I would request at this time, your Honor, to be put on another court due to the fact my wife is expecting a baby, rather than to be gone nights and days,

too. I feel she would rather have me home at night. Is that O.K. with you?

The Court: When is the baby expected?

Mr. Hendricks: March, sir.

The Court: Under the circumstances, I think your request is valid. If you will return to the jury lounge on the 4th floor.

Mr. Hendricks: Thank you, your Honor.

Mrs. Logan: No. 92, Christine Logan.

Now, this confinement of the jury means—would it start now and continue for two and a half month—you do not go home any time?

The Court: The jury would be sequestered, that is correct.

Mrs. Logan: Under the circumstances, I have a young daughter 8 years old and I could not leave her for two and a half months.

The Court: There is no one else to take care of your daughter?

Mrs. Logan: No, not right offhand. My husband
114 is there and then someone could put her in school in the morning, but to really take care of her and prepare her for school, no, and secondly, I think, I could not get excused from my job for two and a half months, too.

The Court: What is your job?

Mrs. Logan: Research Assistant.

At the Veterans Administration.

The Court: What kind of work does that involve?

Mrs. Logan: We advise medical and legal consultants in solving various problems as far as the eligibility for benefits of veterans in accordance with prescribed law.

The Court: Under the circumstances, I will let you return to the jury lounge on the 4th floor.

Mrs. Johnson: Frances Johnson, No. 76. I have a daughter 14 and a son 7. And I have no one to be home with them at night.

The Court: Mr. Williams, can you hear?

Mr. Williams: I could not hear what she said at the start, your Honor.

The Court: Would you mind repeating what you said?

Mrs. Johnson: My number is 76. Frances T. Johnson.

I have a daughter 14 and a son 7 and I would like
115 to be home at night since this case is going to require being away from home at night.

The Court: I will ask you to return to the jury lounge on the 4th floor.

Mrs. Horan: Grace Horan, No. 83. I am the night auditor at Statler Hotel and at the present time my assistant is hospitalized. There is no one else to take my place.

The Court I will ask you to return to the jury lounge.

Mrs. Moore: Mary Moore, No. 24. I would like to be excused, your Honor, because I have a three year old daughter and I would like to be at home at night.

The Court: Anyone else that could take care of the daughter at night, Mrs. Moore?

Mrs. Moore: Yes, I guess my mother could take care of her at night.

The Court: Do you all live together?

Your mother lives with you?

Mrs. Moore: Yes.

The Court: I am going to ask you to have a seat in court, Mrs. Moore and we will see how you make out. We want to excuse as many people as we can without impairing
our jury panel.

116 Mr. Leo Williams: No. 64, Leo Williams. May I approach the Bench.

The Court: Yes, sir.

(At the Bench)

Mr. Williams: Judge, for a period of four years I have been suffering with ulcers and here lately it has come to a stage where I cannot control my water too long. And

it only gives me a slight warning before I have to go to the bathroom.

The Court: Yes, I think people who have a medical problem ought not to be required to sit on a case as extensive as this.

So I will ask you to return to the jury lounge and perhaps you can sit on some other case.

(In Open Court)

Mrs. Williams: Lillian Williams, 27.

I would be glad to serve but there would be certain matters I would have to clear up—contacts that I would have to make.

The Court: Yes, Mrs. Williams, we recognize that is true and of course provision will be made for assisting all jurors in making these necessary arrangements.

And the Marshals' office stands by to do that.

Mrs. Williams: Yes, that is why I was saying that
117 I am chairman of a youth group and we are in the middle of planning for our Youth Observance Week and also I am chairman of the PTA at one of the elementary schools and I have to contact the people.

The Court: I am going to ask you—you are the kind of jurymen we would like to select if possible. I am going to ask you to have a seat in the court room and then we will see how many people have requested to be excused for something less than absolutely compelling, you see, and if I can excuse you, I will.

Mr. Hiram Hayward: Mr. Hayward, No. 17.

I request to be excused from this case. I have two teen-age daughters. My wife is not very well, and I feel that my hand is needed at home in their discipline. They have a tendency to get away with quite a bit with their mother.

The Court: That is a very important reason, probably.

Mr. Hayward: I am willing to serve.

The Court: I would respect it. I will ask you to go down to the jury lounge.

Mrs. Ruth Mrs. Thelma Cummings: No. 35, Thelma Cummings.

I have an 85-year old mother. We live together and I do not think I would like to be away that length of time at night. I do wish to serve. She is in wonderful health, thank God, but I do not think I ought to leave her.

118 The Court: I would ask you to return to the jury lounge for I think that is a good reason.

Mr. Dawson: James Dawson, No. 110. I would like to be excused from this particular jury if I am selected due to the fact I have a teenage daughter. My wife is a hospital assistant and she works five hours at night and someone should be home with the daughter.

The Court: I ask you to return to the jury lounge.

Mr. Munzart, No. 51. May I approach the Bench, sir?

The Court: Certainly.

(At the Bench)

Mr. Munzart: I understand we will be locked up at night.

The Court: The jurymen will remain on the 7th and 8th floor.

Mr. Munzart: I am afflicted with this disease which is most unsightly and I am under a doctor's care.

The Court: I think under the circumstances, I will not impose on you to sit on this long case. You feel you can serve generally?

Mr. Munzart: Yes, sir.

The Court: Then you go down to the jury lounge on the 4th floor.

119 (In Open Court)

Mrs. Wells: Ruby Wells, No. 32. I would like to serve and it would be no problem either at home or at the office but I just wondered if I would be granted permission to

continue my classes at D. C. Teachers College for two nights a week.

The Court: No.

I am afraid we have to put college out of the picture until the service is over.

Mrs. Wells: That would mean that I would miss this semester which I am almost finished and I would not be able to start the next semester.

The Court: I think, under the circumstances, we ought to ask you to step down to the 4th floor to the jury lounge for other consideration.

Mrs. Mannix: No. 53, Mrs. Marian R. Mannix.

I am under the doctor's care for hypertension and since the case is going to last so long, I am a little afraid to attempt it. I want to, I am disappointed.

The Court: We are, too, Mrs. Mannix, but we just have to recognize that we should not place strains like this on people with heart conditions. I will excuse you to return to the 4th floor jury lounge.

Mrs. Mannix: Thank you, your Honor.

120 Mr. John Ross: John Ross, Jr. No. 26.

I would like to be dismissed because I, myself, perform another duty in the community. I am a Youth Director. And being locked up would not let me function during the evening.

The Court: The youth Director work is very important. I think there is perhaps no more important work in the community today. I will ask you to return to the jury lounge on the 4th floor.

Mrs. Sandidge: Mrs. Margaret Sandidge, No. 159. I wish to be excused because I am under doctor's care.

The Court: Yes, Mrs. Sandidge, I will ask you to return to the jury lounge on the 4th floor.

Mr. Charles Kinney: My number is 49, Charles W. Kinney. I wish to be excused because being confined maybe for a few weeks or few days would not suit me because

I have teenage kids and I think they need to be taken care of.

The Court: Would you come to the bench, please, sir.

(At the Bench)

The Court: You are Mr. Kinney.

Mr. Kinney: Yes, sir.

The Court: You have a young child?

Mr. Kinney: Three teenage kids.

121 The Court: How old?

Mr. Kinney: One 18, one 17, one 13 and by me being confined to this case for any length of time, it might get out of hand with them. I think they need my care with them.

The Court: Well, that is a pretty important age to have a fatherly contact around so I think we should excuse you.

You return to the jury lounge on the 4th floor.

(Open Court.)

Mrs. Nettie Wilson: No. 130, Nettie Wilson.

I would like to serve on the jury but I would like to be excused from this case because I have a little granddaughter whom I take care of and I would have to be home at night.

The Court: Your granddaughter is very fortunate to have a person like you to take care of her and I am going to let you go down to the jury lounge on the 4th floor and get another assignment.

Mrs. Wilson: Thank you.

Mr. Roper: James Roper, No. 7.

I would like to have a little more time to work out some personal things here to see if I could possibly serve.

122 The Court: Yes, Mr. Roper. We appreciate your consideration of our problem here and I will hear from you further this afternoon.

Thank you, sir.

Mr. Roper: Thank you, sir.

Mr. Moore, Douglas Moore, No. 74.

The Court: Mr. Moore.

Mr. Moore: Yes, sir.

I would like to approach the bench, if I may.

The Court: Yes, Mr. Moore.

(At the Bench)

Mr. Moore: Your Honor, I am entirely willing and anxious to continue my service for the length of time that may be necessary but I have a military service-connected disability from Europe, which necessitates a special diet which my wife is able to prepare, and I am afraid that being sequestered for two and a half months may precipitate further aggravation.

In fact, this is an inflammation of the intestinal tract, a service-connected disorder.

The Court: Mr. Moore, I am sure counsel on both sides would agree that you should be excused.

Mr. Moore: I would like to continue my service.

123 The Court Yes, sir.

You may go down and get regular assignment in the jury lounge on the 4th floor.

(Open Court)

Now, will the jurymen and the ladies of the jury who have not asked to be excused for the reasons previously mentioned, kindly rise so that we can estimate how many people we have left?

(The jurors stand.)

The Court: Mr. Arida, will you make a count.

The Court: Mr. Areta, will you make a count.

Mr. Areta: Your Honor, I counted approximately fifteen that are sitting down.

The Court: I think there are more than that. Perhaps some of them have gone out for one reason or another. Can you gentlemen give me an idea as to how many are standing up?

Mr. Areta: Your Honor, may I say approximately 105 jurors.

The Court: You have counted those who are standing.

Mr. Areta: Standing.

The Court: Yes. Will you ladies and gentlemen sit down and I will ask those who have asked to be excused to stand.

Would you kindly form a line over here so the Clerk can get your name and number and I think in view of those who are willing to serve, we will excuse those who
124 asked to be excused.

Deputy Clerk: Only those who asked to be excused form a line.

Your number is 152.

The Court: 152.

Deputy Clerk: You are asking to be excused.

Mr. Harriston: Yes, sir.

The Clerk: You may be excused.

Mr. Roberts: No. 5.

Deputy Clerk: No. 5 is your name?

Mr. Roberts: Lewis Roberts.

Deputy Clerk: All right. You are excused.

The Court: Would you ladies and gentlemen return to the jury lounge on the 4th floor?

Mrs. Tompkins: Number 126.

Deputy Clerk: You are excused.

No. 137.

Mrs. Pierce: Jean Pierce, No. 137.

Deputy Clerk: You are excused.

No. 6, Mary Frazier.

Mrs. Frazier: I did not ask to be excused but I said I did not think my supervisor would be willing to excuse me for that length of time.

The Court: You would like to serve.

Mrs. Frazier: I would like to be excused but it
125 would be up to my employer.

The Court: I am glad you feel that way about it

and if you will have a seat in the court room, we will see what we can do for you.

Mrs. Dignan: No. 87, Margaret Dignan.

Deputy Clerk: You are excused.

The Court: If you will return to the fourth floor jury lounge and perhaps you can help Mr. Haas in his house.

Mrs. Thomas: No. 33.

Deputy Clerk: Mrs. Thomas, you are excused.

Mrs. Mary Moore: No. 24. Mary Moore.

Deputy Clerk: No. 24, Mrs. Mary F. Moore, you are excused.

The Court: Return to the jury lounge.

Mrs. Gilkes: Florence W. Gilkes. No. 138.

Deputy Clerk: You are excused.

Mrs. Addison: No. 91.

Deputy Clerk: You are excused.

The Court: Return to the 4th floor.

Mr. Leach: Stacey Leach, No. 44.

Deputy Clerk: Stacey M. Leach, you are excused.

Mr. Jackson: Osceola Jackson, 156.

Deputy Clerk: You are excused.

Mr. Whitaker: Arthur Whitaker, No. 141.

Deputy Clerk: You are excused.

Mrs. Williams: Lilly Williams, No. 27.

126 I did not say I did not want to serve. If I could get these telephone calls in before serving, I would be willing to serve.

The Court: If you would like to see what you can do during the noon hour about the calls and return if you want to serve, we will certainly consider you.

Deputy Clerk: No. 27.

The Court: Ladies and gentlemen of the panel, the Court is going to excuse you at this time so that you can get some lunch. And ask all of you to report back at 1:45.

At that time we will seek to conclude this. Thank you.

(At 12:30 p.m. the trial recessed until 1:45 p.m.)

Mr. Bittman: Your Honor, may we approach the bench for one second, please?

The Court: Yes.

(At the Bench)

Mr. Hansen: Your Honor, there is a juror No. 106, Carl Dickson, with whom I was personally acquainted some 16 years ago. I have not seen him for about 15 years. I was a little surprised that he did not recognize me in Court but I guess I have changed a great deal since that time. But I thought I should call attention of the Court to the fact. I knew Mr. Dickson in connection with official business of the treasury department.

The Court: Was he employed in the treasury department?

Mr. Hansen: He is former Assistant Chief of Secret Service. He is now retired.

The Court: Former Assistant Chief of Secret Service now retired?

Mr. Hansen: Yes.

The Court: I think, under the circumstances, he should be excused.

Mr. Williams: Yes, sir.

128 Deputy Clerk: As you were walking in the door No. 61 approached me, Miss Anna Soldano. She wants to ask to be excused because she is a very nervous person. She thinks she ought to be excused.

(Open Court.)

The Court: Mr. Carl Dickson, you are excused from serving in this case.

Return to the jury lounge on the 4th floor Mr. Dickson. Mrs. Soldano.

Deputy Clerk: Step forward, please.

The Court: The Clerk has told me that you requested to be excused for certain reasons that you brought to his attention.

Mrs. Soldano: Yes.

The Court: Under the circumstances and for those reasons I will excuse you but ask you to return to the jury lounge on the 4th floor.

Mr. Bittman: What number?

Deputy Clerk: 61.

Mrs. Williams: Mrs. Eddye Williams, No. 125.

I would love very much to serve but I do not think I could serve on it that long because I am under the treatment of a doctor and I could not stay away that long.

Other than that I would not mind serving.

129 The Court: In view of your medical reasons, we will excuse you.

Mr. Roper: James Roper, No. 7, and I would like to be excused from this panel because I have checked during the recess and found I have a judicial proceeding coming up within that period that would involve possibly great personal sacrifice to me.

The Court: Very well. Mr. Roper, we will excuse you to return to the 4th floor jury lounge.

Deputy Clerk: Your number is?

Mr. Morris: No. 68, John Morris.

The Court: I recall you spoke to Mr. Williams and me at the conclusion of our session this morning. And I asked you to bring up that matter at this time.

Mr. Morris: Yes, in fact, this is the first time I have served on the jury and unfortunately, I am not too well versed on the procedures and so forth. But I made no arrangements.

You spoke something about being down here two or three months. I made no arrangements for anything like that and I really would be in serious trouble unless I have a half day to get my affairs in shape financially or otherwise.

130 The Court: I will excuse you, Mr. Morris.
Deputy Clerk: What number is that?

Mr. Morris: No. 67.

The Court: You are excused to report to the Jury Lounge on the 4th floor.

The Court: Now, ladies and gentlemen, we will return to the questions which have been put to you up to this point.

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173 Mr. Williams: I have tried to make a tally and
174 I cannot vouch for its accuracy but we can give you
an accurate count by tomorrow. The thing I feared
would happen has come about. That we now have fewer
than ten people who are not employed by the Federal
Government on this whole panel and we have, I think,
over 90 per cent of the panel sitting, who are employees of
the Government, and this is something that I feared would
happen.

The Court: That is Washington for you.

Mr. Williams: If there were sequestration—we started
out, your Honor, with about 74 per cent of Government
employees, and now with the remainder of the panel, we
have, I think over 90 per cent.

• • • • •

192 Mr. Williams: Yes, sir.

As your Honor knows, I made a motion this
193 morning on the whole problem of the jury array.

As I see it, during the day, the array with which we
were presented was the array which was impaneled Wednes-
day last at least it was the way it appeared to me from the
sheets with which I was furnished.

In order to avoid the necessity of making a record on
that, I wonder if the Government could check with the Clerk
of Court and I will do the same, if we could stipulate that
tomorrow, the jury was picked from an array which was
impaneled on Wednesday last.

The Court: I do not think that is the fact, Ed. I just checked with my clerk and I sought to have him call first jurymen from the old list, from the originally-called list.

He told me that the people in the jury lounge had mixed up the slips. So that was impossible as of the time he said at the time I spoke to him.

Whatever the fact is, of course—

Mr. Williams: I would like to stipulate to it rather than have a hearing on it.

The Court: Well, as soon as possible, we will ascertain the facts and make them available to you. If that can be the subject of a stipulation, fine.

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243 Thereupon

Myron Weiner

a witness called by counsel for the Government, having been duly sworn, testified as follows:

Direct Examination

By Mr. Bittman:

244 Q. Mr. Weiner, state your name, please. A. Yes, sir.

Myron Weiner.

Q. Where do you reside? A. New Jersey, Mr. Bittman.

Q. What is your present business or occupation? A. An attorney.

Q. Licensed to practice in what state? A. New Jersey.

Q. Was there a time when you worked in Washington, D.C.? A. Yes, sir.

Q. When was that?

Mr. Williams: Excuse me. We are willing to stipulate, if the Court please, that Mr. Weiner paid a fee of \$5,000 to Mr. Baker in 1961 as alleged in the bill of particulars which was served upon us and that he paid it with a check made out to Mr. Tucker.

Mr. Bittman: I appreciate that. You were unwilling to stipulate before the trial as to that.

I appreciate that after we brought Mr. Weiner from New Jersey you are willing to do it.

Mr. Williams: Your Honor, we were not asked to stipulate to this before the trial. I will then state we
245 will do it.

I do not think that gratuitous remark was called for. We are willing to stipulate to that fact.

The Court: Very well. Is there anything else you wish to prove there with the witness?

Mr. Bittman: Yes.

By Mr. Bittman:

Q. You were in Washington, D.C., when? A. 1961 to 1964.

Q. In what capacity or what type of business did you handle in Washington in that period of time? A. I was engaged in the public relations business.

Q. Did you have more than one business? A. Only one. There were two corporations. Roberts Associates and Applied Public Relations.

Q. When did you first meet the defendant Robert G. Baker? A. Sometime in 1958 or 1959, sir.

Q. Did you have a client, Mr. Weiner, in 1961 called the Ocean Freight Forwarders Association? A. Yes.

Q. In connection with that agreement, did you have any conversations with Robert G. Baker? A. Not in connection with the Ocean Freight Forwarders Association. Not
246 in connection with them. The only conversation with Mr. Baker was that he was aware of what I was doing in Washington.

Q. Do you recall the date of the check you paid for Mr. Baker to Ernest Tucker? A. To the best of my recollection it was September 21, 1961.

Q. Now, prior to that occasion did you have any con-

versation with Mr. Baker in connection with the possibility of your retaining him? A. Yes, sir.

Q. Please state those conversations to the best of your recollection, state when they were, where they were and who was present. A. I first came down to Washington on this particular business sometime in the late spring of 1961.

I was friendly with Mr. Baker and discussed what business I had in town; during the course of this time we had had discussions concerning the retention of Mr. Baker as counsel for my public relations firm, as, if and when I decided to stay in Washington and establish my business here.

Q. At this initial conversation, who was the first one that mentioned a possible fee? A. Well, I believe Mr. Baker suggested that his firm and himself would be very capable persons to represent my public relations firm.

Q. Now, what other conversations to the best of
247 your recollection, Mr. Weiner, did you have with Mr. Baker prior to September 21, 1961? A. I had many conversations with Mr. Baker.

Q. In connection with the desire— A. Well, we had discussed the possibility of that—after that time, of retaining Mr. Baker on three or four occasions.

It was generally the same conversation concerning those possibilities and my need for local counsel.

Q. Did you discuss what the agreement would be with Mr. Baker? A. Generally that Mr. Baker would represent my corporation, that I would be free to consult with him concerning legal problems that I was either having or might have in the corporation or any advice I might need in order to transmit proper information to clients.

Q. What was the beginning date of oral retaining agreement you had with Mr. Baker?

Mr. Williams: We have conceded payment of the fee. It was paid by check which I believe is to be offered as Government exhibit 7.

I do not think the inquiry is relevant in the light of the concession.

The Court: In view of the concession, supposing
248 you go on to what else you would have from this witness.

Mr. Bittman: All right.

By Mr. Bittman:

Q. What is the retainer agreement, for future services? was that it? A. Yes.

Q. Did you ever avail yourself of these services? A. a matter of fact, nothing came about wherein I had to avail myself of the services of Mr. Baker.

Q. Directing your attention, Mr. Weiner, to September 21, 1961, what conversation did you have with Mr. Baker on that date in connection with the check? A. I called, made an appointment. I went to Mr. Baker's office to see him. He did not, I do not think, know why I was calling but he saw me and we discussed the retention of Mr. Baker as per our prior conversations.

We then proceeded to finalize the agreement and he just took out a check and wrote it out in the agreed stipulated amount.

Q. Did you have any conversation with him, Mr. Weiner, while you were writing out the check? A. Yes. I merely asked Mr. Baker how he wanted the check written.

249 Q. What did he tell you? A. He asked me to make it out to his law partner, Mr. Tucker. Which I did.

Mr. Bittman: You stipulated to that as government exhibit No. 7.

Mr. Williams: Yes.

By Mr. Bittman:

Q. Mr. Weiner, did you have another conversation with Mr. Baker approximately along in September, 1962? A. Yes.

Q. Where was that conversation, sir? A. Mr. Baker's office.

Q. Was anyone else present besides yourself and Mr. Baker? A. No, sir.

Q. Would you please state to his Honor, Judge Gasch and the ladies and gentlemen of the jury, what that conversation was. A. Yes, sir. Mr. Baker asked me if I possibly could or if any persons or people that I knew, would be willing to loan him funds for the Carousel Motel.

Q. What was your response? A. That I did not have the funds but that, if I could possibly get someone to loan him funds, I would be delighted to try.

Q. No further questions.

Mr. Bittman: Your Honor, in view of Mr. Williams' stipulation, I would like to offer Government exhibit No. 7 into evidence at this time.

Mr. Williams: No objection.

The Court: It will be received in evidence.

(Government exhibit 7 received in evidence.)

Mr. Williams: No questions of the witness, your Honor.

The Court: Step down, please.

(Witness excused.)

Thereupon

Andres Lopez-Cruet

a witness called by counsel for the Government, being first duly sworn, was examined and testified as follows:

By Mr. Bittman:

Q. State your name. A. Andres Lopez-Cruet.

Q. Where do you reside? A. San Juan, Puerto Rico.

Q. What is your present business or occupation. A. I am self employed.

Q. Prior to being self employed, were you in the meat business? A. I was in the meat business early in—late 1960 or early 1961.

251 Q. What was the name of your company at that time, sir? A. Mr. Bittman, it was Boringuen Meat Production.

Q. In connection with the meat business, would you state what happened in the latter part of 1960 or early 1961? A. Well, I was bringing meat from Nicaragua and I heard that they were finishing a plant in Haiti and I did not know the owners of the plant so I went to Puerto Rico.

Q. Who were the owners of the plant? A. The Murchison Brothers, a company from New York. So I called Sepolitus one day and asked him if he knew the Merchison Bros. and he said they were friends of his so he asked me how much he would get if he could get these people to sell me the whole production.

So, I told him I could give him a penny a pound. So he left a week afterward for Washington.

Q. Let me interrupt here, Mr. Lopez. Now, after you had that conversation with Mr. Benitez, did he go to Washington, D. C.? A. Yes.

Q. Eventually did you have a conversation with Mr. Robert G. Baker? A. No.

252 Q. Well, at a later time? A. At a later time yes.

Q. Do you see Mr. Robert Baker in the court room now? A. Yes, sir.

Q. Would you point him out to the jury? A. (witness complies.)

Q. Directing your attention to May 17, 1961, did you see Mr. Baker on that date? A. Yes.

Q. Is that the first time you ever met Mr. Baker to the best of your knowledge? A. Yes, sir.

Q. And where did you have this conversation with him? A. At Mr. Baker's office.

Q. And this was in the US. Senate, Secretary of the Senate Majority office? A. Yes.

Q. Who else was present besides yourself and Mr. Baker? A. Mr. Benitez.

Q. Please spell it. A. B-e-n-i-t-e-z.

253 Mr. Williams: I think we can probably save time by stipulating it is B-e-n-i-t-e-z.

The Court: Thank you.

By Mr. Bittman:

Q. Please state what conversation took place on March 9, 1961 in Mr. Baker's office A. Well, Mr. Benitez introduced me to Mr. Baker and told me they were partners on this deal.

Q. Excuse me. A. Partners on this business and he was leaving for Guam and while he was in Guam that anything that would come out, that to talk to Mr. Baker.

Q. Do you recall any further conversations at that time?

A. No.

Q. Have you exhausted your recollection? A. Yes, sir.

Q. Was there talk about splitting the penny a pound?

A. They were partners, I think they were splitting it.

Q. Was there any conversation about that on May 19, 1961? A. No, sir.

Q. Now, subsequent to March 17, 1961, did you enter into a contract with that Haitian Meat plant? A.
254 Yes, sir.

Q. What is the name of the Haitian Meat plant?

A. Haitian-American Meat and Provision Company.

Q. Called HAMCO? A. HAMCO.

Q. After you started purchasing the meat from this Haitian plant called HAMCO, did you send Commission checks pursuant to your agreement? A. I did.

Q. To whom did you send the first check? A. To Reina Benitez.

Q. Where was she living at that time? A. In Guam.

Q. In Guam.

Was that because her husband was a deputy high Commissioner of the Pacific Trust Territories? A. Yes.

Q. I now show you government exhibit 8 marked for identification and asked you if that is the original of the

first check that you sent in connection with these commissions? A. Yes, sir.

Q. Did you also send other checks during 1961
255 and 1962? That is in connection with these commissions? A. Yes, sir.

Q. To whom did you send those checks? A. To Mr. Baker.

Q. Mr. Robert G. Baker? A. Yes.

Q. Did you have a conversation with Mr. Baker after you sent the first check to Reina Benitez and before you sent the second check? A. Yes, sir.

Q. Where did that conversation take place? A. In Puerto Rico.

Q. Where, in Puerto Rico? A. I do not remember.

Q. Who else was present? A. Mr. Law.

Q. L-a-w? A. Yes.

Q. Mr. Baker? A. Yes.

Q. To the best of your recollection would you please state to the Court and to the jury what was said at that time? A. Well, Mr. Baker told me that the check was being sent to Guam and would take too long so he would
256 Benitez part to Guam.

Q. Subsequent to that conversation did you send the other checks directly to Mr. Baker? A. Yes.

Q. I now show you government exhibit 9 through 19 marked for identification and ask you if those are the checks that you sent to Mr. Robert G. Baker in 1961 and 1962. A. Yes, sir.

Q. Did you bring those checks with you from Puerto Rico, Mr. Lopez? A. No.

Q. You did not bring these checks? A. Oh, yes, these checks.

Q. Yes.

And you brought them up at my request, correct? A. Yes, sir.

Q. Are these your records? A. Yes, sir. Kept under my care and custody and control as my records in the ordinary course of business.

Mr. Bittman: No further questions.

The Court: Cross examine, Mr. Williams.

Cross Examination

257 By Mr. Williams:

Q. You testified before the grand jury in this case, right? A. Yes.

Q. Back in April of 1965 on April 7? A. I do not remember the exact date.

Q. You also made a statement, did you not, in November of 1963, to agents of the FBI? A. I was investigated by the FBI but I do not recall, or remember exactly.

Q. Do you recall that it was in 1963? A. I do not remember, no, sir.

Q. And you also were interviewed by representatives of the Senate Rules Committee in 1964, is that correct? A. The Senate group I do not remember.

Q. Do you remember, sir, that a Mr. Ryan and a Mr. Scott interviewed you on March 3, 1964? A. I was interviewed by some people but I do not remember the names.

Q. As I understand your testimony, Mr. Lopez, you were in the meat business in 1960 toward the end of the year in San Juan, is that right? A. Yes.

Q. The name of your company was the Boringuen
258 Meat Production Company? A. Yes.

Q. And at that time, as I understood your testimony, you were importing meat from Nicaragua, was that correct? A. Yes.

Q. And you wanted to import meat from some company closer to your city, than Nicaragua? A. Yes, sir.

Q. In order to save transportation costs, right? A. Yes.

Q. It was in 1960 that you heard of a company called "Hamco" which was a meat packing company or a slaughter

house in Haiti in Puerto Rico, Haiti, right? A. I do not know. It was late 1961, sometime in 1961.

Q. Early 1961. A. Late 1961. I do not remember exactly.

Q. Well, you remember Mr. Lopez, that you had a conversation in San Juan with Mr. Benitez in which you discussed with him the possibility of his arranging for you to get the produce of Hamco, the company in Haiti? A. Yes.

Q. And that you told him that, if he could make arrangements for you to get that meat, that you would pay him a penny per pound. A. Yes.

259 Q. Of all the meat that you received, is that correct? A. That is correct.

Q. Now that conversation took place either in very late 1960 or early 1961, did it not? A. I do not remember the exact dates.

Q. Well, do you recall that you were asked that question, Mr. Lopez, before the grand jury when you appeared sometime ago, specifically on April 7, 1965 and when you were asked about your conversation with Mr. Benitez, you fixed it in 1960 or 1961. I am directing your attention to page 3576 of the Grand Jury testimony. (handing to witness.) A. I say I do not remember exactly. It could have been it says.

Q. Does it or does it not, Mr. Lopez, refresh your recollection that the conversation might have been in 1960 or early 1961? A. It could have been 1961. I do not remember.

Q. In any event, there came a time when you did enter into an arrangement about which you told the jury where you agreed to pay Mr. Benitez a penny per pound for any meat that you received from Hamco, the company owned by the Murchisons. Right? A. Yes.

260 Q. Thereafter, as I understood your testimony in response to Mr. Bittman's question, sometime in

May, 1961, you learned that Mr. Benitez and Mr. Baker and a Mr. Law were partners, right? A. I did not know if Mr. Law was partners but I knew, Benitez told me that he and Mr. Baker were.

Q. Mr. Baker and he were partners on this arrangement.

Mr. Lopez, the reporter does not get it when you nod your head, you will have to answer. Is that correct or not? A. I mean, I knew, what I knew was that Mr. Benitez and Mr. Baker were partners.

Q. I believe you testified that you first sent a check pursuant to this arrangement to Reina Benitez who was then in Guam, right? A. Yes.

Q. Reina Benitez is the wife of Jose Benitez, right? A. Yes.

Q. They were out there on some governmental assignment, right? A. Yes.

Q. Thereafter the checks that you said pursuant to this arrangement were mailed to Mr. Baker, for distribution, is that correct? A. Yes.

261 Q. And that arrangement continued, did it not, through 1961 and 1962? A. Until they cut me off, yes, sir.

Q. Until you terminated or your arrangement with Hamco was terminated? A. They certainly terminated my contract.

Q. That was at the end of 1962, is that correct? A. Could have been. I do not remember.

Q. These checks that Mr. Bittman showed to you are all of the checks that were mailed by you, Mr. Lopez, to Mr. Baker, or Mr. Benitez? A. There is one missing there.

Q. One missing?

Mr. Williams: You do not have them?

Mr. Bittman: Yes, we have them.

Mr. Williams: No further questions.

The Court: Mr. Bittman.

Redirect Examination

By Mr. Bittman:

Q. I would like to add one or two questions. The reason one check is missing was because of the fact it was dated late in 1962 before it was sent to Mr. Baker. A. Yes, sir.

Q. It would not have constituted income to Mr. Baker. A. It would have been sent in 1962, yes.

The Court: You may step down, Mr. Lopez.

(Witness excused.)

Mr. Hansen: Mr. Law.

Thereupon

Frances E. Law

a witness called by the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hansen:

Q. State your name, please. A. Frances Law.

Q. L-a-w? A. Right.

Q. Where do you live? A. 1850 Columbia Pike, Arlington.

Q. What is your business or occupation? A. Manufacturers Representative.

Q. How long have you been in that business? A. Approximately fifteen-sixteen years.

Q. Now, do you know a person named Tom Webb? A. Yes.

Q. And have you ever had a business relationship with Mr. Webb? A. Yes, sir.

Q. And over what years? A. Oh, probably about 1952, I should say up until the present time.

Q. What was the nature of the business relationship then with Mr. Webb? A. Well, we were partners and for quite some period of time.

Q. Did you have an office together? A. Yes.

Q. Where? A. At 17, oh, we have had two or three locations, the last was at 1730 K Street.

Q. Now, did you ever represent the Murchison Interests in Texas? A. Mr. Webb did and I was, being associated with him, did some work in it.

Q. Do you know the defendant, Robert G. Baker? A. I do.

Q. Do you see him in the court room here? A. Yes.

Q. Do you know a person named Andres Lopez-Curet? A. Yes, sir.

Q. Now, directing your attention to 1961, and 1962, did you have a business relationship with Mr. Lopez? A. Yes, sir.

Q. What was that? (Recess)

After Recess

281 (The jury entered the courtroom and the witness resumed the stand.)

By Mr. Hansen:

Q. Mr. Law, I believe that the question that was pending at the time of the recess was directing your attention to the year 1961 and 1962.

Did you have any business relationship with Mr. Lopez? A. Yes, sir.

Q. What was the nature of it, please? A. Mr. Lopez approached us, as I recall, probably in the early part of '61, asking if we could get him in contact with the principals who owned the Haitian Meat Packing Plant or the Haitian Slaughter House, saying that he would like to buy the entire production of that slaughter house, and we proceeded from there, and got him in touch with the principal owners of the slaughter house.

Q. All right.

Now, did you have any agreement with Mr. Lopez concerning payment to you and Mr. Webb? A. Yes, Mr.

Lopez offered to pay a cent a pound for all the meat that he bought from the slaughter house to—and that cent a pound was to be split four ways.

282 Q. In what four ways, please? A. Well, Mr. Baker, Mr. Benitez, Mr. Webb and myself.

Q. All right. Now did you and Mr. Webb receive payments in connection with that agreement? A. Yes.

Q. From whom did you receive the payments? A. Mr. Baker, in practically all instances, as I recall.

Q. All right. Did you have an agreement with Mr. Baker concerning the receipt of those moneys from him? A. Yes, sir.

Q. Was that oral or written? A. I think to the best of my knowledge it was oral. There might have been some kind of written agreement but I don't recall.

Q. What was the nature of the agreement you had with Mr. Baker then concerning those moneys? A. That he would pay us half of what he collected, or half a cent a pound.

Q. All right, sir. Now, did you thereafter receive
283 payments for Mr. Baker? A. Yes, sir.

Q. Do you have a record? Did you maintain a record of the payments— A. Yes.

Q. —you received from Mr. Baker? What kind of record was it? A. It was primarily just a record in our checkbook.

Q. I hand you what has been marked as Government Exhibit 22 for identification, and ask you if that is the record to which you have referred? A. (Examining.) I think that is correct.

Q. Will you identify that? Tell us what it is, please, Exhibit 22. A. Well, these are stubs from our checkbook showing deposits as we received them.

Q. From Mr. Baker? A. That's right.

Q. Who made the entries on Government Exhibit 22 for identification? A. The girl in the office, our secretary.

Q. Were they made under your direction or supervision? A. Yes, I would say so. We just turned
284 the checks over to her—

Q. All right. A. —and she would deposit them.

Q. Now, I hand you Government Exhibit for identification No. 24, and ask if you will please state what it is. A. This is a check for Reina Benitez for \$233.80, paid on our check no. 183.

Q. When you say "our" that means who? A. Webb & Law.

Q. Webb & Law. What was the purpose of that check? A. I can't answer exactly at this moment. The only thing I would say is that this is probably an accounting that we had made at the time and probably we had received this much more as our portion and we reimbursed Benitez—

Q. All right. A. —for the difference, is the only thing I can—

Q. All right, sir. When you say "we" had an accounting, to whom do you refer? A. I am saying Webb & Law.

Q. I see. A. Made an accounting with the other
285 half, Benitez and Baker.

Q. I see. A. I would presume this would be the only thing.

Q. All right. Now at my request have you made a summary of the receipts that are reflected on your checkbook stubs, Government Exhibit 22? A. Yes. I—we did, I think with the help of one of your men.

Q. I hand you Government Exhibit 23 for identification and ask if that is the summary you have made? A. I think that is correct.

Q. All right, sir. A. As I recall it, yes.

Q. Does it truly and accurately reflect the receipts from Mr. Baker as shown on Government Exhibit 22? A. I would say that is correct. I haven't memorized all the figures, of course—

Q. Very well. A. —but it looks as though they are taken from the check stubs.

Mr. Hansen: Your Honor, I offer Exhibits 22, 23 and 24 into evidence.

286 (Defense counsel examines.)

Mr. Williams: I have no objection, Your Honor.

The Court: All right. They will be received in evidence. (Government's Exhibits 22, 23 and 24 for identification received in evidence.)

Mr. Hansen: No further questions, Your Honor.

Cross-examination

By Mr. Williams:

Q. Mr. Law, as I understand it, the arrangement which you had with Mr. Baker and Mr. Webb and Mr. Benitez was that there would be what in effect was a four-way split on any commissions that you received from Borinquen Meat Products, is that correct? A. That's right.

Q. And Borinquen Company was the company which was controlled by Mr. Lopez? A. That's right.

Q. And I further understand from your testimony and I ask you if this is correct, that for the greater part in 1962 and 1961 those checks were sent to Mr. Baker for distribution to you and Mr. Webb and Mr. Benitez? A.

That is correct.

287 Q. When I say Mr. Benitez, I mean either Mr. Benitez or his wife Reina Benitez. A. That is correct.

Q. Now in fact, in the year 1961 there were a total of three such checks, is that correct, Mr. Law? A. If that is what is shown on the record, I presume that is correct.

Q. Do you recall that there was a check that went to Reina Benitez in the amount of \$984.69 in October of '61? A. I presume that is correct.

Q. There was a check then in the amount of \$1075.22 which went to Mr. Baker in November of '61, is that correct? A. That's right.

Q. And then there was a check—I will show you these to refresh your recollection. This has already been offered

in evidence. It is Government's Exhibit 8, an October 17 check in the amount of \$984.69 payable to Reina Benitez. A. That's right.

Q. Then there was a check payable on November 3, 1961 to Robert Baker in the amount of \$1075.22. A. Yes.

Q. Then there was a check on December 11, '61, 288 in the amount of \$1816.60 payable to Baker, is that correct? A. That's right.

Q. Now those were all of the commissions that were paid from Borinquen to the group in 1961, is that right? A. That is correct.

Q. Now I am going to ask you whether or not Mr. Baker did not endorse the entire check in the amount of \$1816.60 which was paid on December 11, 1961 over to Webb & Law, your partnership? A. That is correct.

Q. That check was deposited in toto to the Webb & Law bank account on December 15, of 1961, was it not? A. I presume that is correct if it is shown on it.

Q. I hand you Government's 22 and ask you if that refreshes your recollection that the entire check in the amount of \$1816 and some cents was deposited to the Webb & Law bank account on December 15, of 1961? A. That is correct. It is shown here.

Q. Yes. Thereafter you issued a Webb & Law check in the amount of \$233 to Reina Benitez, is that correct? A. That is correct.

Q. And you issued none of the proceeds of that 289 check to Mr. Baker? A. That's right.

Q. Now in 1962 the same arrangement continued, did it not? A. That is correct.

Q. And the checks from the Borinquen Meat Products Company were sent during '62 to Mr. Baker? A. That's right.

Q. And Mr. Baker in turn would send to you, Mr. Law, and/or your partner, Mr. Webb, half of the proceeds of those checks, is that correct? A. That's right.

Q. In Government's Exhibit 22 you show the deposits

to your account of those checks, is that correct? A. That is right.

Q. In Government's Exhibit No. 23 you have undertaken to summarize all of those deposits, is that correct? A. That's right.

Q. In fact you show the total transaction insofar as it affects Webb & Law for both the year 1961 and 1962, is that correct? A. That's right.

Q. And Webb & Law in 1962 received a total of 290 \$8,628.92, is that correct? A. That's right.

Q. That was all you received from Mr. Baker, is that correct? A. That's right.

Q. And deposited in your Webb & Law account? A. That's right.

Q. At the end of 1962, your arrangement with Mr. Lopez of the Borinquen Meat Products Company terminated? A. That's right.

Q. That was the end of it so far as Borinquen and Lopez was concerned? A. That's right.

Mr. Williams: I have no further questions, Your Honor.

The Court: Mr. Hansen.

Mr. Hansen: Nothing further, Your Honor.

The Court: You may step down. Thank you.

(Whereupon the witness left the stand.)

Whereupon

Reina C. de Benitez

was called as a witness by the Government and having been duly sworn, was examined and testified as follows:

291 Direct Examination

By Mr. Bittman:

Q. Would you please state your name. A. Reina C. de Benitez.

Q. Where do you reside, Mrs. Benitez? A. In Puerto Rico.

Q. What is your business or occupation? A. Housewife.

Q. Commencing mid 1961 was your husband the Deputy High Commissioner of Pacific Trust Territory? A. Yes.

Q. At that time you were living in Guam, is that right? A. That's right.

Q. Now when you were living in Guam were certain meat commission checks sent to you? A. Yes.

Q. I now show you Government Exhibit S marked for identification, check dated October 17, 1961, and ask you if that appears to be the original of a check that you received on or about that date? A. Yes, I signed it.

Q. You signed the back of it? A. Yes.

292 Q. Now after you signed it what did you do with it? A. I deposited it.

Q. Deposited it in your account? A. Yes.

Q. Then did you write a check to Robert G. Baker? A. Yes.

Q. I now show you Government Exhibit 20 for identification and ask you if that appears to be the original of the check that you sent to Robert G. Baker? A. Yes.

Q. And that is a record of yours that was turned over to the Government, is that right? A. Yes.

Q. That is the original of your check, is it not? A. Yes.

Q. Your signature is on it? A. Yes.

Q. Now subsequent to your receiving that first check dated October 17, did you receive other checks? A. Yes.

Q. Now the first check you received from Andres Lopez on behalf of Borinquen, is that correct?

293 A. Yes.

Q. Now after that date from whom did you receive checks? A. From Bobby Baker.

Q. And did you also receive checks from Bobby Baker in 1962? A. Yes.

Q. Now what did you do with those checks that you received from Mr. Baker? A. Deposited them in my account.

Q. Did you keep a list of all the moneys that you received for income tax purposes in 1961 and 1962? A. Yes.

Q. To the best of your knowledge did you add up all the information and put it on your tax returns for 1961 and 1962? A. Yes.

Q. I now show you Government Exhibit 21 for identification and ask you if you can identify that. A. (Examining.) My income tax.

Q. Does that indicate how much money in meat commissions that you and your husband received for the year 1961? A. \$842.35.

Q. Did you follow the same procedure in 1962 that you followed in 1961, that is, that you made computations of all the money that you received for income tax purposes? A. Yes.

Q. I now show you Government Exhibit premarked 21A for identification and ask you what that document purports to be. A. Five thousand—

Q. I mean is that your tax return for 1962? A. Yes.

Q. How much meat commissions did you receive during 1962? A. \$5,402.38.

Mr. Bittman: That is all, Mrs. Benitez. Thank you very much.

296 Cross-examination

By Mr. Williams:

Q. Mrs. Benitez, Mr. Bittman handed you a Government Exhibit 8, which was the first check, as I understand it, received from the Borinquen meat deal, is that correct? A. Yes.

Q. And you, after depositing this check, wrote a check to Mr. Baker in the amount of half of that which was \$492.35, is that correct? A. Yes.

Q. And that left you with \$492.35 as a net from that check, is that correct? A. Yes.

Q. Now thereafter did you receive other checks from Mr. Baker as your part of the proceeds of the Borinquen meat deal? A. Yes.

Q. Did you receive from Mr. Baker, Mrs Benitez, a portion of the check which has been offered in evidence as Government's Exhibit 9 in the amount of \$1075.22? A. (Examining.) That was sent to me?

Q. Do you understand my question, Mrs. Benitez? The second payment from Mr. Lopez of the Borinquen company, was that check which is before you, Government's Exhibit 9, made payable to Mr. Baker.

297 Now did you receive part of the proceeds of that check? A. Yes.

Q. You did. Do you recall how much of that check you received? A. No. It must be there. I don't know.

Q. Do you recall that in December, Mrs. Benitez, you received a check from Mr. Law of the firm of Webb & Law in the amount of \$233? A. Yes.

Q. And some cents. A. (Nods affirmatively.)

Q. Was that a portion of the final check which was paid in 1961? A. I guess so, as far as I recall.

Q. But do you know, Mrs. Benitez, whether or not it is a fact that there were only three checks in all during the year 1961 that came from the meat deal? A. Yes.

Q. And did you receive— A. My part.

Q. Your part? A. Yes.

298 Q. And your part was one-fourth of the total, is that correct? A. I guess so, yes.

Q. Well, was that what you were to receive, a fourth of the total? A. Yes.

Q. Now Mr. Bittman handed you Government Exhibit 21, a 1961 Puerto Rican income tax return.

Did you prepare this return, Mrs. Benitez, yourself? A. Yes.

Q. You did? A. Yes.

Q. For your husband? A. Well, I added up the meat business.

Q. You added it up? It only bears his signature, does it not? A. It is a joint one, a joint for me and him.

Q. It is joint? A. That's right.

Q. But you did not sign it, is that correct? A. No.

Q. The same thing is true of the 1962 return, is
299 it not, Mrs. Benitez? A. Yes. He signed it.

Q. He signed it.

Now during all of 1962 did you and your husband receive your portion of the meat proceeds from Mr. Baker?
A. Yes.

Q. You received what was coming to you from the deal all during the year 1962? A. Yes.

Q. Is that correct? A. Yes.

Q. And made a report on your Puerto Rican return of that amount? A. Yes.

Q. Now do you in fact, Mrs. Benitez, recall receiving a check in the amount of \$233.80 from Mr. Law or Mr. Webb in '61? A. Yes.

Q. At that time you were out in Guam, is that correct?
A. I think so.

Q. When— A. In Guam or Puerto Rico, I don't remember. It was Christmas time.

300 Q. When was it that you and your husband went to Guam for his assignment with the Government?
A. In May '61.

Q. In May of '61.

Did you remain out there in the Pacific Islands throughout the balance of '61? A. Yes.

• • • • •
301 Q. I am going to hand to you, Mrs. Benitez, what has been marked by the Clerk of the Court as Defendant's Exhibit No. 1 for identification, and ask
302 you if you know about this check. A. (Examining.) Mr. Baker gave it to my husband.

Q. That was given to your husband in 1961 in connection with this meat deal, was it not? A. I guess so, yes.

Q. That is a check in the amount of \$700, is it? A. Yes.

Q. Now—

The Deputy Clerk: Defendant's Exhibit No. 2 marked for identification.

(Document marked as Defendant's Exhibit No. 2 for identification.)

Mr. Williams: Your Honor, I have here a Xerox of a document and I would ask Your Honor if you would ask the Government to produce the original for the purpose of this examination.

It is a check dated February 17, '61, payable to Jose Benitez, signed by Ernest Tucker.

The Court: Show it to Mr. Bittman.

Mr. Bittman: (Examining) Your Honor, I am not sure that we have the original of this. I can ask Mr. Tucker.

303 I was unaware that they needed any checks from us. I am not sure we have that check in our possession.

The Court: Well, if you have—

Mr. Bittman: I don't believe we do, Your Honor.

Mr. Williams: Well at this point, Your Honor, I will use the Xerox to see if it refreshes her recollection.

The Court: May the Court see it?

Mr. Williams: Yes, Your Honor.

(Handed to Court)

By Mr. Williams:

Q. Mrs. Benitez, I am going to hand you what has been marked as Defendant's No. 2 for identification and ask you if this refreshes your recollection of a payment made in connection with a meat deal to your husband, Mr. Benitez?

Can you read that, Mrs. Benitez? A. It says to my husband for \$937 by Mr. Tucker.

Q. Yes. Does that refresh your recollection that your husband received that money in '61 in connection with the Haitian meat deal? A. Yes, I guess.

The Court: The question is, Mrs. Benitez, does that refresh your recollection?

304 Do you remember that check as part of the Haitian meat deal?

Do you remember that check?

The Witness: Well, my husband and Mr. Baker, they lent each other money so I don't know if that is part of that or a loan between them or Haitian meat business.

By Mr. Williams:

Q. Well, the Haitian meat deal was the only business deal that— A. That's right.

Q. —Mr. Baker and your husband had in '61, was it not? A. That's right.

Q. There was no other business deal? A. No.

• • • • •

312 Q. Is your recollection refreshed, Mrs. Benitez, that your husband Jose Benitez, received a reimbursement from Mr. Baker for his expenses in connection with this meat deal? A. Yes.

313 Q. Did he in fact receive money from Mr. Baker to your knowledge for expenses that he incurred for travel in connection with the meat deal? A. Yes.

Q. Do you recall, Mrs. Benitez, that Mr. Baker paid for Mr. Benitez' travel from San Juan to Washington with respect to this meat deal?

Mr. Bittman: I object, Your Honor, unless Mrs. Benitez knows of her own personal knowledge.

The Court: That is what he is asking.

The Witness: Yes.

By Mr. Williams:

Q. You do know of that, Mrs. Benitez? A. (Nods affirmatively.)

Q. Do you know whether the check which I showed you as Defendant's Exhibit No. 2 for identification was an advance by Mr. Baker to Mr. Benitez on the Haitian meat deal?

Mr. Bittman: Objection to the question, Your Honor she has previously testified that she doesn't know what that check is. It might be a loan or it could be anything.

Mr. Williams: This is cross-examination, I respectfully say to Your Honor.

Mr. Bittman: Well, you have already asked her
314 that question.

Mr. Williams: I haven't asked her about an advance, Your Honor.

The Court: Do you know what that check is for?

The Witness: Probably of the meat business, but you see my husband and Mr. Baker lent each other money, and he asked if we needed some or what not. I don't know positively.

As he said the only business was the meat business, so maybe it was an advance, on the meat business.

The Court: Do you know what it was for or what it involves?

The Witness: No. I guess he know.

The Court: Don't guess, Madam. Just tell us if you know. If you don't know—

The Witness: I don't know.

The Court: You don't know?

The Witness: No.

By Mr. Williams:

Q. Is your husband in Washington, Mrs Benitez? A.
Yes.

Q. Is he here in court? A. Yes.

315 Q. In the courthouse? A. Yes.

Mr. Williams: I have no further questions.

Redirect Examination

By Mr. Bittman:

Q. I show you Defense Exhibit No. 1, Mrs. Benitez, that Mr. Williams has previously shown you.

Have you ever seen that check before? A. I don't think so, no.

Q. And— A. It is signed by my husband.

Q. Is it possible that this could have been a loan between your husband and Mr. Baker that you—

Mr. Williams: Your Honor—

By Mr. Bittman:

Q. —wouldn't know about?

Mr. Williams: I don't think this witness should be cross-examined.

She has been tendered by the Government, Your Honor.

The Court: I think the lady has said she just doesn't know what it is, Mr. Williams.

Mr. Williams: He is asking her about another check now, Your Honor, a check in the amount of \$700
316 dated in March of 1961, payable to Jose Benitez by Mr. Baker, which she has said under cross-examination was in connection with the Haitian meat deal.

This is a separate check from the one about which I was just asking her, Your Honor.

Mr. Bittman: Your Honor, I am trying to get—

The Court: I will let counsel inquire, but of course she is your witness.

Mr. Bittman: Certainly, Your Honor. I didn't ask her about this transaction so certainly it is proper on redirect.

The Court: I say you may inquire about that.

Mr. Bittman: Thank you, Your Honor.

The Court: It is not cross-examination.

Mr. Bittman: No, Your Honor.

The Court: Very well.

By Mr. Bittman:

Q. Is this the same category of checks as the other check Mr. Williams showed you, that you don't know what it is for and possibly—

The Court: Mr. Bittman, ask direct questions of this witness.

Mr. Bittman: All right, Your Honor.

317-325 The Court: Ask her if she knows what it is.

By Mr. Bittman:

Q. Do you know of your own knowledge what that check was paid to your husband for? A. No.

Q. No. A. No.

• • • • •

337 Thereupon

Murray C. Spett

a witness, being duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your name. A. Murray C. Spett.

Q. What is your business or occupation? A. An attorney.

Q. Are you associated with the firm, please? A. I am.

Q. Please state the name of the firm? A. Weisman, Celler, Allan, Spett & Sheinberg.

Q. Directing your attention to 1961, did your firm have occasion to send a referral legal fee to Robert G. Baker? A. Yes.

Q. I now show you government exhibit 57 marked for identification which appears to be a microfilm copy of a check, Mr. Spett, at my direction, did you attempt to find the original of that check? A. I did.

338 Q. When is the last time you saw the original of that check, Mr. Spett? A. February of 1965.

Mr. Williams: Your Honor, we will concede the payment of \$2500 to Mr. Baker which Mr. Spett's law firm in 1961 made.

The Court: Very well.

• • • • •

340 Thereupon

Ernest C. Tucker

a witness called by counsel for the Government, having been duly sworn, testified as follows:

Direct Examination

By Mr. Hansen:

Q. State your full name. A. Ernest C. Tucker.

Q. Your address. A. 2000 P Street, Northwest, Washington, D. C.

Q. Is that your business address? A. Yes, sir.

Q. What is your residence address? A. 2453 Tunlaw Road, Northwest, Washington, D. C.

Q. What is your business or occupation? A. I am an attorney.

Q. Do you know the defendant Robert G. Baker? A. I do.

Q. Do you see him in the court room today? A. I do.

Q. How long have you known him? A. About 18 years.

Q. How long have you been practicing law in Washington? A. Approximately fourteen years.

341 Q. And how long have you been at your present office address? A. Since about 1954.

Q. That is at 2000 P Street? A. Yes.

Q. Northwest? A. Yes.

Q. Do you have a room or a suite of offices? A. Suite of offices.

Q. What is the suite number? A. 605.

Q. How long have you had that suite? A. Since approximately 1954.

Q. How many rooms in the suite? A. Six rooms.

Q. Has Mr. Baker ever had office space in your suite? A. Yes.

Q. When? A. In about 1957. Right after Mr. Baker had graduated from law school he had a small room in the suite for a very short time.

342 Q. Did he have space in the suite subsequent to that at any time? A. Subsequent to that he used a suite as he cared to from time to time.

Q. Directing your attention to the latter part of 1963 and 1964 did Mr. Baker have space in the suite at that time? A. In the latter part of 1963, Mr. Baker occupied a room in the suite from probably, during 1964 and part of 1965, the corporation he was associated with also occupied the space there.

Q. What corporation was that? A. It would be the Serv-U Corporation.

Q. Did Mr. Baker—directing your attention to the year 1961 and 1962, and 1963, you have testified that Mr. Baker used the suite as he needed it, right? A. Yes.

Q. Would that be on a daily basis or about how frequently would that be? A. I could not say as to the frequency. He did not occupy it on a full time basis. He had a key to the office and came and went as he cared to for purpose of doing his own work.

Q. Did he have a key to the office during those years?

A. Yes, sir.

343 Q. What was Mr. Baker's principal occupation during the year 1961 to 1963 if you recall? A. He was Secretary to the Majority of the United States Senate.

Q. Did you and Mr. Baker ever have a partnership in the practice of law? A. No.

Q. Did you have an association of some kind? A. Yes, sir, we did have an association.

Q. Describe it to us. A. Well, it was an association where by in certain instances if we had a joint client, we would split the fee.

Q. Did you ever practice under the title of Tucker and Baker? A. Yes, we had stationery to that effect.

Q. Was Mr. Baker's name on the door of the suite during 1961, 1962 and 1963? A. Yes, it would have been.

Q. Now, if you know, did Mr. Baker have a law office any other place? A. Well, in the latter part of 1950 he

had a law office in South Carolina in Easley, South Carolina.

Q. If you know—has Mr. Baker ever been admitted to the practice of the law in the District of Columbia?

344 A. I do not have specific knowledge concerning that at this time.

Q. Do you know of any other place where he is admitted to practice? A. He is a member of the bar of South Carolina.

Q. With respect to the year 1961, did Mr. Baker pay any expenses of the office suite at 605? A. Not basic expenses so far as rental and secretarial expenses are concerned.

Q. He paid no rent? A. No.

Q. Did there come a time when he did rent space? A. Yes, that would have been subsequent to the latter part of 1963 when the corporation occupied the space in the suite.

Q. Was that after Mr. Baker had left the Senate? A. Yes, it was.

Q. Did he have a secretary? A. Yes.

Q. What was her name? A. Miss Carroll Tyler.

Q. And did she work in the suite? A. Yes, she did.

345 Q. Beginning about when? A. Well, it would have been the latter part of 1963 or the first part of 1964.

Q. Did she and Mr. Baker occupy the same office or separate offices? A. Well, when he first occupied space in the suite because of the limited facilities, he and Miss Tyler occupied the same office. Then in the middle of 1964, possibly in that period, we rented two more offices across the hall from my suite and he occupied one office and Miss Tyler occupied the other office.

Q. If you know, Mr. Tucker, is Miss Tyler living? A. No, she is deceased.

Q. Now, Mr. Tucker, did you and Mr. Baker ever have a joint bank account? A. Yes.

Q. During what period of years? A. Well, it would have been started in either late 1959 or early 1960, the account

has not been closed. I do not think it has at least unless he has closed it.

I have no funds in it.

Q. Where is the account? A. It was at the McLaughlin Bank at 10th and G Street, Northwest, I think.

346 Q. Did you deposit money to the account? A.

Yes, I deposited personal funds to the account and Mr. Baker would also deposit personal funds in the account.

Q. Can you write checks in the account? A. Yes, both of us would write checks.

Q. Do you have any bank statements or canceled checks relating to that account? A. Well, I have a few of the canceled checks on the account, possibly for the year 1960, 1961, 1962 that would be applicable to my own income tax which I kept in my own personal file.

Q. Aside from that, you have none? A. No.

Q. Do you know where they are? A. I do not know where they are.

Q. Do you know what became of them? A. Yes, I gave them to Mr. Baker.

Q. Was that joint account a business account? A. Yes, it was basically a business account.

Q. Did you keep any record of the deposits and withdrawals in the account? A. Well, the checkbook was in my office and, as a rule, I made the entries of course for
347 the checks I wrote and when the checks would be returned to the bank, I generally made the reconciliation.

Q. Would that include Mr. Baker's deposits and withdrawals? A. The deposits which Mr. Baker made I would not necessarily have had knowledge of those until the statements came in.

And at that time I would make an effort to enter them.

Q. Now, directing your attention to 1961, Mr. Tucker, did you share any legal fees with Mr. Baker that year? A. During 1961, we had two clients in which we split the fee.

Q. What was the split? A. 50-50.

Q. And what were the names of the clients? A. One client was Goodkind and O'Dea, an engineering firm in New Jersey, and the other was Dearborn Machinery Company in Dearborn, Michigan.

Q. Mr. Tucker, I hand you government exhibit for identification 62 and ask if you will state what it is, please.

A. There is a record of my own cash receipts for the year 1961.

Q. Who made the entries in that record? A. These 348 entries would have been made by me.

Q. All right.

Does Government exhibit 62 reflect the receipts from Goodkind and O'Dea and the Dearborn Corporation? A. Yes, sir.

Mr. Hansen: I am going to offer this in evidence, your Honor, Government exhibit 62.

The Court: Mr. Williams, do you wish to be heard?

Mr. Williams: I would like to see it, your Honor.

The Court: Do you wish to be heard?

Mr. Williams: No, sir.

The Court: Received.

(Government exhibit 62 received in evidence.)

By Mr. Hansen:

Q. Mr. Tucker, I hand you government exhibit 62 and I ask you if you would read off the amounts and dates of the receipts from Goodkind & O'Dea, from Dearborn Corporation as well? A. During the month of February, 1961, there is a fee from Goodkind and O'Dea for \$1,250.

June, 1961, \$338.13. from Dearborn Corporation.

349 During the month of August, 1961, there is \$500 from Dearborn Corporation.

During September, 1961, there was \$416.66 from the Goodkind & O'Dea Company.

In October, 1961, there was \$833.34 from Goodkind and O'Dea.

For the month of November there was \$416.66 from Goodkind and O'Dea.

That is it.

Q. Thank you, sir.

I believe you testified that those fees were divided 50-50 between you and Baker, right? A. I gave Mr. Baker 50 per cent.

Q. Did you have occasion to call Mr. Baker's attention in any way to the amount of the fees? A. Well, sometime before the filing of the tax returns for that tax year, I would advise him in writing concerning the amount of the fees involved plus the amount of the expenses involved toward the same account.

Q. Do you have any of those papers now? A. No, sir. They would just be made on a nominal working sheet which I would give to him.

Q. Mr. Tucker, I show you government exhibit 7 in evidence which is a check to Ernest Tucker, Esq., from 350 Roberts Associates, Myron Weiner, dated September 21, 1961, and ask you if you received that check? A. I did.

Q. From whom did you receive it? A. To the best of my memory, it was received at the office by mail.

Q. From whom? A. From Mr. Weiner's office.

Q. Did you have any conversation with Mr. Baker concerning that check after it was received? A. Yes, I telephoned Mr. Baker concerning it and inasmuch as it did not belong to me and he advised me that it was his fee, and I, in turn, deposited it in my account and issued him a check for \$5,000 for a similar amount.

Q. What were the circumstances under which you did that? A. Well, as I suggested, I telephoned Mr. Baker, and actually in fact suggested that he might have a new check issued and he asked me if I would just put it in the bank for collection and issue one to him, which I did out of my personal account.

Q. Did you have any conversation with Mr. Baker as to

why the check was made payable to you? A. No, I did not. You are speaking of as of that time?

351 Q. Yes, at the time you received it. A. It was an error, the explanation to me was.

Q. Is that what Mr. Baker told you? A. Yes, sir.

Q. It was made out to you in error? A. Yes, sir.

Q. Now, I show you government exhibit for identification No. 61, and ask if you can identify it. A. Yes, this is my personal check for the \$5,000 which I would have issued to Mr. Baker on the collection of this \$5,000 Weiner check.

Mr. Hansen: I offer exhibit 61 in evidence, your Honor.

The Court: Do you wish to be heard?

Mr. Williams: No, sir.

The Court: Received.

(Government exhibit 61 received in evidence.)

By Mr. Hansen:

Q. Did you have any part of the proceeds of the Weiner check—did you receive any part of the proceeds of that check? A. No, sir.

Q. Did you ever perform any services for Mr. Weiner?

A. No, sir.

352 Q. Do you know Mr. Weiner? A. Yes, sir.

Q. Mr. Tucker, I show you government exhibit 57 in evidence check to Tucker and Baker from the law firm of Weisman, Celler, Allen, Spett and Sheinberg, dated November 30, 1961. Did you receive that check? A. Yes, this came to the office.

Q. Did you receive the proceeds of that check? A. No, sir, I did not.

Q. What was done with the check? A. It was deposited in the Tucker and Baker account.

Q. Directing your attention to 1962, Mr. Tucker, did you have any relationship to a Carousel Motel? A. What year?

Q. 1962? A. Yes, sir, I was counsel for the partnership which owned the motel.

Q. What was the partnership composed of, Mr. Tucker?
A. Mr. Baker and Mrs. Gertrude Novack and Mr. Donald Novack had a partnership for the purpose of construction and operation of a motel named Carousel on or in Ocean City, Maryland.

Q. Did you do any accounting work for the Motel in 1962? A. I took care of the basic receipts and dis-
353 bursements of the construction fund of the partnership during the year 1962. Now, this does not include the stuff which the accountant may have done.

Q. Where was the accountant—was that in Washington here? A. The accounting firm was Horath & Horath, a local accounting firm.

Q. What were the respective interests of the owners of the motel in 1962? A. Mr. Baker owned 50 per cent. Mrs. Gertrude Novack owned 25 per cent, Mr. Novack owned 25 per cent.

Q. Did you write checks on any bank accounts of the Carousel during 1962? A. Yes, I took care of and made the basic disbursements of the construction money during that period.

Q. What were they, bank accounts or what? A. Well, the partnership had three accounts to the best of my memory, account No. 1 at the American National Bank in Silver Spring, an operational account in the Calvin Taylor Bank in Ocean City, Maryland, and an operational account in the American National Bank in Silver Spring.

Q. Did you know who were authorized to write checks on those accounts? A. Myself, Mr. Baker, and Donald Novak and Gertrude Novak could have written checks on
354 all three accounts to the best of my memory.

Q. If you know, when was the Carousel construction started, Carousel Motel? A. Started in late 1961 and concluded about mid-1962 as to the first section.

Q. When did the motel open for business? A. Mid-1962.

Q. Was that in the summer? A. Yes, sir.

Q. Did it operate at a profit during that year? A. I

think they had an operational loss for the year 1962 because of the interest and depreciation.

Q. How about on a monthly basis, did they have a profit any month after it opened in 1962? A. My best memory is that they had a direction operational loss before interest and depreciation but as to the amount, I do not recall.

Q. Do you know what the fixed operating expenses were per month at the Carousel after it opened? A. The fixed?

Q. Yes. A. By that you mean the mortgage payments and so forth?

Q. Let us start with that, then.

355 Q. Yes. A. Well, the approximate fixed expenses were in round figures of \$8,000 per month.

Q. That was for what? A. That would include the mortgage payment, note payments on furniture and similar items.

Q. All right. Were there any fixed operating expenses? A. The operational expenses would not have been fixed, no, sir.

Q. Would not have been fixed.

Were accounts payable after the motel opened or when it opened? A. Accounts payable when it opened?

Q. Yes. A. Well, we would have always had accounts payable from current operation, yes.

Q. I see.

Did you ever have any conversation with Mr. Baker in 1962 about the financial condition of the Carousel Motel?

A. I am positive that Mr. Baker and myself and Mrs. Novak and Mr. Donald Novak continually discussed that situation during that period.

Q. What was the conversation that you had? A. Could you make that a little more specific?

356 Q. Well, I asked you if you discussed—you testified that the motel was operating at a loss? A. Yes, sir.

Q. Did you have conversations about that? A. Yes, sir.

Q. As to what should be done about it, if anything? A. Well, the problem in such situation always is to just put

in some money to make up the loss and this is the basic type of discussion we have had for accounts payable.

Q. Was there any conversation about selling the motel?

A. Yes, there was—the motel was always for sale along that—at about that time because of the expenses and Mrs. Novak, I think, was one of the principal instigators as to the possibility of sale.

Q. Was that because of its financial condition? A. Yes, sir.

Q. Was it sold? A. Yes, it was.

Q. When was that? A. It was sold effective January 1, 1963.

Q. To whom? A. To Serv-U Corporation.

Q. What was Mr. Baker's relationship with the
357 Serv-U Corporation, if you know? A. Mr. Baker was at that time a stockholder in the Serv-U Corporation.

Q. Were you employed by Serv-U Corporation? A. I was counsel for the Serv-U Corporation at that time and an officer.

Q. Do you know what Mr. Baker's stockholding was at that time? A. What it was?

Q. Yes, the amount? A. 28.5 per cent at that time.

Q. Were you on the pay roll of the Carousel in 1962? A. Yes.

Q. Did you have a monthly salary? A. No, it was not a monthly salary. It was more or less on the basis of the amount of work done and possibly varied from month to month.

Q. Did you collect your salary in 1962? A. Yes. Other than the latter part of 1962, there was a carry-forward they owed me on their accounts payable of approximately \$1800. But that was later paid.

Q. That was later paid? A. Yes, sir, after it was sold.

358 Q. How much later? A. It would have been sometime in early 1963. As to the exact day, I do not recall.

Q. Did the Carousel have the funds to pay you that \$1800 in 1962? A. Well, in the latter part of 1962 we had a lot of accounts payable and I was among those.

* * * * *

360 Q. Mr. Tucker, I will direct your attention to 62, did you ever borrow any substantial amount of money from Mr. Baker? A. In the latter part of 1962, I borrowed \$2,000 on one occasion from Mr. Baker.

Q. Do you know what month that was? A. No, sir. It would have been in the latter part of 1962 but I could not definitely say.

Q. Did you receive the money from Mr. Baker? A. Yes, sir.

361 Q. In what amount or what form? A. In cash.

Q. Did you repay the loan? A. Yes, sir.

Q. When? A. Sometime in early 1963 after they had paid me the approximately \$1800 that they owed me.

* * * * *

367 Cross Examination

By Mr. Williams:

Q. Mr. Tucker, you testified a number of times before the grand jury, did you not? A. Yes, sir.

Q. You testified on May 11, May 12 and May 13, 1965, right? A. I do not recall the dates.

Q. You do recall—do you not—testifying over a period of three days in May of 1965? A. Yes, sir.

Q. Then you testified in June again, June 8, of 1965? A. Yes, sir.

Q. And you testified in November, 17 and November 18 of 1965 before the same grand jury, did you not? A. Yes, sir.

Q. And during 1964 and 1965 you were interviewed by agents of the Government on a number of occasions—were you not? A. Yes, sir.

368 Q. By FBI agents? A. No, sir.

Q. By agents of the Internal Revenue Service? A. Internal Revenue, sir.

Q. And by investigators of the Senate Rules Committee?

A. Yes, sir. May I just make one correction, Mr. Williams, at one time an FBI agent did have my permission to check a typewriter in my office.

Q. You also testified, did you not, Mr. Tucker, before the Senate Rules Committee in 1964? A. Yes, sir.

Q. Now, Mr. Tucker, you testified on direct examination pursuant to Mr. Hansen's questions that you received certain fees from a company called Goodkind and O'Dea, in 1961, right? A. Yes.

Q. You also received fees from a company called Dearborn Machinery Movers, is that correct? A. That is right.

Q. And I believe that you said that you received a fee of \$1250 in February of 1961 from Goodkind and O'Dea? A. Yes.

Q. And then a fee of \$416.66 from Goodkind & O'Dea in September of 1961? A. Yes, sir.

Q. And then a fee of \$833.34 in October of 1961? A. Yes, sir.

Q. Finally a fee of \$416.66 in November of 1961? A. Yes.

Q. And the total fees were \$2916.66 from Goodkind and O'Dea in 1961? A. I do not believe that is correct.

Q. Is that wrong? A. The total fees from those two clients would have been approximately \$3700.

Q. My question, Mr. Tucker, was, your total fee from Goodkind and O'Dea was \$2916.66? A. Oh, I am sorry. That would be approximately correct.

Q. Then you received two fees from Dearborn Machinery Company in 1961? A. That is right.

Q. One was \$338.13 and that was in June of 1961. A. I do not recall the exact—there was one for \$500 and one for \$333.

Q. The other one was for \$500, right? A. Yes, sir.

Q. So that the total fees that you received as you said was \$3754.79? A. I do not know the exact amount without calculating it.

370 Q. That was the sum total of the fees you received from those two clients? A. Yes, sir.

Q. Now, you never drew a check and gave Mr. Baker half of that money, did you? A. No.

Q. In fact, Mr. Tucker, on your 1961 income tax return, you reported this whole sum yourself, did you not? A. Yes.

Q. Less certain deductions that you took? A. Right.

Q. And the deductions that you took consisted of a \$25 check for payment to lawyers Cooperative, is not that so? A. Yes, sir.

Q. And another \$25 payment to another book publishing company, right? A. Matthew Bender Co.

Q. Yes, and \$101.68 payable to Oldheim Clothiers, and you deducted those items from the \$3754.79, right? A. Yes.

Q. And in that the amount of money you contributed to the deduction of the total fee from those clients. A. That says portion of it.

Q. There was one other check, \$8937, right? A. That sounds like it.

371 Q. That was issued in February of 1961, right? A. I do not recall.

Q. It was issued to Jose Benitez, was it not? A. Yes.

Q. And that constitutes—does it not—Mr. Tucker, the sum total of the amount that you deducted off of those fees for purposes of your income tax payments? A. Yes.

Q. Now, the \$937 check and I will show you, and let you refresh your recollection on this subject—

Mr. Williams: Mark those, please.

Deputy Clerk: Defendant exhibit 3 for identification.

(Defendant exhibit 3 marked for identification.)

By Mr. Bittman: Do you have a copy for us?

Mr. Williams: I will turn over the one that has just been marked. You can use that one.

• • • • •

Q. I am going to, if I may, hand you these Xerox copies of these four checks which the clerk has kindly
 372 marked as defendant exhibit 3 for identification and ask you if those are the checks which you deducted from the total of \$3754.79? A. Yes.

Q. For purposes of tax? A. Yes.

Q. No one of those checks is made out to Mr. Baker, right? A. No, sir.

Q. They are made out to two book publishers? Lars Cooperative, Matthew Bender and to Goldheim, the Clothier and to Jose Benitez? A. Yes.

Q. Now, the check made out to Jose Benitez was made out, was it not, at Mr. Baker's request? A. Yes.

Q. In Feb. 1961? A. Yes.

Q. And that was to pay Mr. Benitez in conjunction with the Haitian Meat deal? A. I do not know the purpose of it.

Q. Didn't he tell you at the time? A. No, sir.

Q. From time to time, Mr. Baker asked you, did
 373 he not, to issue checks to Mr. Benitez? A. To the best of my memory that is the only check which I ever issued to Mr. Benitez.

Q. Well, I am going to ask you, Mr. Tucker, whether on May 13 of 1965, you were asked about payments you made on behalf of Mr. Baker? A. What date is that?

Q. May 13 of 1965, I am reading at page 4562. Whether or not you said, by "they" I am referring to Mr. Baker, Mr. Webb, Mr. Law and Mr. Benitez, as a consequence the checks for some reason or other that I do not know why were made payable to Tucker and Baker because they always came to our office and I became aware of this from time to time, and they came in and I did inform Mr. Baker to deposit it in the joint account and he would normally make a distribution as to the percentage of whoever they belonged to and on numerous occasions he would call me up or possibly leave word with the secretary and ask me if I would write a check to Mr. Benitez or Mr. Bromley,

or Mr. Webb and give them their share and their share and whatever that was would be left as to how much it was, whether it was \$100 or \$1000? A. The check we are talking about was issued on my personal account. That is what I was speaking of. The checks you are speaking of were issued out of the Tucker and Baker account
374 in which he deposited the funds from the meat company.

Q. Was there any explanation viz-aviz the check we are talking about in February, namely the check for \$937 when you drew it to Mr. Benitez? A. No, sir.

Q. But it was— A. I did not have any basic interest in it.

Q. It was at Mr. Baker's request? A. Oh, yes.

Q. You recall Mr. Tucker, on May 12 of 1965 you were interrogated before the Grand Jury in this case and you were asked about the total amount of referral fees paid to Mr. Baker in various years in which you were associated with him. A. Yes.

Mr. Bittman: What page is that?

Mr. Williams: 4355, sir.

By Mr. Williams:

Q. You recall that you said in 1962 you received nothing. In 1961 according to the internal revenue computation you received \$1038.16. A. I do not recall the figures.

Q. May I show it to you to see if it refreshes your recollection.

Is that right, Mr. Tucker? A. Yes, sir.

375 Q. You got the \$1038.68 I assume by adding \$937 and \$101.68, right? A. Well, I am not certain. There is a difference between these two figures. As to the amount. It looks like it is some \$40.

Q. What is the amount on that, sir? A. \$1,038.16.

Q. \$1,038. A. \$1,038.16, yes, sir.

Q. That is only a difference of 42 cents, is it not? A. No.

Q. Am I wrong about that? A. I think those calculations that I just enumerated from my own return would come to \$1,088.

Q. I understand that but on your grand jury testimony, you accepted the \$1,038.16 figure, did you not? A. Well, I must have said that, yes, sir.

Q. At that time you received that, that was the total referral fee charged on your books to Mr. Baker? A. Yes.

Q. But in fact, those charges had been made by 376-95 checks payable for expenses, right? A. Expenses which Mr. Baker was familiar with.

Q. And not paid to Mr. Baker? A. No.

Q. Do you remember there came a time, Mr. Tucker, when Mr. Baker asked you to reconstruct for him from your records such fees as he had received during certain years from the partnership or from the practice of law—did that happen? A. Yes, he has requested that information of me.

Deputy Clerk: Defendant Exhibit 4 marked for identification.

(Defendant exhibit 4 marked for identification.)

Mr. Williams: I was going to ask you before I hand this to the government whether this is in your handwriting, Mr. Tucker. That is defendant's 4 in evidence.

The Witness: Yes, that looks like my handwriting.

Deputy Clerk: What is it?

Mr. Williams: A memorandum from Mr. Tucker.

396 By Mr. Williams:

Q. For the year, 1961, Mr. Tucker, you listed the Weiner fee of \$5,000, is that correct? A. Yes, sir.

Q. And the Celler fee of \$2,500, is that correct? A. Yes, sir.

Q. And then you listed in 1961 an item \$151.68, is that correct? A. Yes, sir.

Q. And that \$151.68 was, was it not, the total of a

hundred and one sixty-eight and the two \$25.00 that you paid on his behalf? A. No, I don't think so. This was for another purpose, Mr. Williams, if you would like for me to explain it to you.

Q. \$151.68 represented what, Mr. Tucker? A. Well, that would probably represent some expenses out of the Tucker and Baker checkbook which were not reflected on my own return. In addition to those, if you will take the Tucker and Baker checkbook, you will find there are some expenses in Mr. Baker's behalf that I unfortunately did not report as a deduction of my own.

Q. Is it just a coincidence, Mr. Tucker, that the item \$151.68 in your Memo to Mr. Baker happened to be the total of the first three items on the Board which
397 you have identified as being three of the four checks that I handed to you as Defendant's exhibit 3 for identification? A. I am really not positive, Mr. Williams.

Q. Well, in 1962, on this same sheet you indicated that he had no fees, is that right, from you? A. That is correct.

Q. And that was correct? A. Yes.

Q. And the figure for 1960 is correct, is it not with respect to his referral fees? A. That looks correct although I will have to recheck the figures.

Q. And the other figures—59 and 58—look to be correct, do they not? A. I will have to recheck them.

Q. What is your recollection, would they be correct? A. My recollection would be they are correct.

Q. You had the kind of relation with him that many lawyers have in the sense you shared offices with him but you weren't partners in the true sense of the term? A. Yes.

Q. You shared fees in matters where you worked
398 together, is that correct? A. That is correct, sir.

Q. But your recollection is as I take it, from your testimony that this one five one sixty-eight represents a different combination of figures from the three figures accounted for by the three checks which I showed to you

a moment ago, namely, a check in the amount of \$25 to Lawyers Cooperative, the check in the amount of \$25 to Matthew Bender, and a check in the amount of \$101.68 to Goldheim's. A. That is my best recollection although I just can't be certain.

Q. But, you do recall that you made this up and gave this to Mr. Baker? A. Yes, sir. This Weiner—September 1961—for \$5,000, that is for the purpose of informing him that I did not report it.

Q. Right. A. The Celler fee of \$2,500 is for the purpose of informing him that I did not report it and the other fees that you see that we did split are not there.

Q. Because you reported them, did you not? A. Yes, I did report them.

Q. And reported all of them save for the deductions that we have gone over, all right? A. Yes, I reported them all.

399 Q. Now, in 1962,—Mr. Hansen questioned you concerning the Carousel Motel. The Carousel was under construction in 1961, is that correct? A. Yes, sir.

Q. You were counsel for that company? A. Yes, sir.

Q. And in 1961, it had not yet opened up. A. No, sir.

Q. And your clients had borrowed very large sums of money from various lending institutions to construct this hotel, had they not? A. That is right, sir.

Q. And to acquire the land for it at Ocean City, Maryland? A. That is right, sir.

Q. And actually the motel did not open until 1962, isn't that correct? A. Yes, mid-1962.

Q. And in fact, there was a tremendous amount of damage done to the motel in the spring or late winter of 1962 by a tidal wave down off the Eastern Shore isn't that so? A. Yes, sir.

Q. It set back construction for a long period of 400 time, did it not? A. Yes, it did.

Q. It did a great deal of damage to the building, did it not? A. Yes, sir.

Q. And to the beach? A. It did damage to the building and to the beach.

Q. Yes. So that the time for opening the Carousel was set back, was it not? A. Yes, sir.

Q. And during 1962, the Carousel did not even operate at a profit excluding interest and depreciation, isn't that correct? A. Yes, that is right.

Q. In other words, they were having a very difficult time keeping the doors open and meeting the payroll down there, isn't that correct? A. That is right.

Q. And they were borrowed to the hilt, isn't that correct? A. Well, they had borrowed quite a bit of money, yes, sir.

Q. They had borrowed quite a bit of money during the years preceding 1962 and during 1962, isn't that so?
401 A. Yes, sir.

Q. Now, Mr. Tucker, you don't have any other checks from your 1961 records showing payment to Mr. Baker for services, do you? A. You mean for referrals?

Q. For anything. A. Well, I don't believe I understand you.

Q. You don't have any checks among your records showing payments to Mr. Baker for referral fees, do you? A. No, sir—There is one, though.

Q. There is one? A. Yes, sir.

Q. Where is that? A. The Government brought it to my attention. It is for \$503, which I neglected to charge him for.

Q. This is a photostat of a check. Do you have the original? Is this the check that you are talking about?
A. Yes, sir.

Q. When was that paid, sir? A. December 26, 1961.

Q. And this is a check payable to Earnest Tucker, signed by Mr. Tucker, endorsed over to Mr. Baker, is that correct?

A. That is right.

402 Q. In 1961. And it is a reimbursement for expenses? A. Yes, sir.

Q. Is that what you call it, expenses for Baker? And that check was issued because Mr. Baker had incurred expenses going to an exhibition in New York, had he not? A. That is my best recollection.

Q. Was that a motar boat exhibition? A. I think it was a motel exhibition.

Q. A motel exhibition. It was a motel exhibition. He went up there in connection with the Carousel? A. In connection with his business, the motel.

Q. He incurred those expenses and he was reimbursed for those expenses? A. Yes, but that would be a reimbursement out of our joint account, and it was not charged against the Carousel to my knowledge, and I should have charged that to Mr. Baker on the referral fees.

Q. This was the Carousel expenditure? A. That is my money.

Q. Did you get it back? A. No.

Q. Did you bill the Carousel? A. It didn't belong to the Carousel, Mr. Williams.

403 Q. It was an expenditure incurred on behalf of the Carousel? A. No, Mr. Baker incurred the expenses in going to the Motel Show and how he handled it with the Carousel I had nothing to do with it, personal expenses, I assume.

Q. You were at that time on a retainer from the Carousel? A. Yes, sir.

Q. During 1962? A. Yes, sir.

Q. You billed them, did you not, for services, and expenses? A. Right.

Q. This normally would have been part of your expenses billed to the Carousel, would it not? A. That is right, but I never did it.

Q. But you didn't do it? A. Yes.

Q. During the 1962 period, Mr. Tucker, Mr. Baker and his associates borrowed \$250,000 from an Oklahoma Bank so that they could keep the Carousel? A. During what period?

Q. 1962. A. No, sir.

404 Q. It was not during 1962? A. No, sir.

Q. What year do you affix it then? A. 1963; this would be Serv-U Corporation though.

Q. Do you recall, Mr. Tucker, that Senator Kerr made the arrangements for Mr. Baker to borrow this money from a bank in Oklahoma City? A. No, sir, I have no knowledge of that. As a matter of fact, the Carousel Motel never owed a bank in Oklahoma City.

Q. Do you not recall, sir, that Senator Kerr made arrangements for a loan to Mr. Baker in 1962?

Mr. Bittman: I object to this question. He has already said no. Now, Mr. Williams asked another question, the same question.

The Court: I understood he said he didn't know about this loan respecting the Carousel.

Mr. Williams: May I see if I can refresh his recollection by another question, Your Honor?

The Court: All right.

By Mr. Williams:

Q. Do you recall a loan from an Oklahoma bank in the amount of \$250,000? A. No, sir.

405 Q. You don't recall that? A. No, sir. May I?

There were several loans from Serv-U Corporation, Mr. Williams, but I am speaking only of the Carousel Motel.

The Court: Anything further, Mr. Hansen?

Mr. Hansen: Yes, Your Honor.

Redirect Examination

By Mr. Hansen:

Q. Mr. Tucker, Mr. Williams showed you this check.

Mr. Hansen: I would like to have this marked for identification, if I may.

The Deputy Clerk: Government's Exhibit 70-A for identification.

(Whereupon, the document referred to above was marked Government's Exhibit 70-A for identification.)

The Court: Did that previously have another identity symbol?

Mr. Hansen: No, it had no number at all, Your Honor.

The Court: Very well.

Mr. Williams has seen it?

Mr. Williams: Yes, sir.

The Court: Very well, you may proceed.

406 By Mr. Hansen:

Q. Mr. Tucker, Mr. Williams has handed you this check which is now marked Government's Exhibit 70-A for identification, and I believe Mr. Williams said to you that that check was issued in 1962.

Mr. Williams: No, in 1961.

By Mr. Hansen:

Q. What day was it issued? A. December 26, 1961.

Q. Was the Carousel opened in 1961? A. No, sir, it was under construction at that time.

By Mr. Hansen:

Q. Mr. Tucker, Mr. Williams had put a figure here of \$3,754.79; that figure represents what, Mr. Tucker? A. That figure—although I can't see it all—

The Court: You wish to step down, sir?

(The witness steps down to the blackboard)

The Witness. (continuing) That is the only one I can't see.

(The witness returns to the witness stand.)

The Witness: That figure represents, sir, the total amount of the fees from both Goodkind and O'Dea and Dearborn Machinery Company for the year, 1961.

407 By Mr. Hansen:

Q. How much of the \$3754.79 went to Mr. Baker in 1961?

A. \$25 and \$25, and \$101.68, and the \$937, plus the \$503, which I forgot to calculate on my 1961 income tax.

Q. All right. That makes how much, Mr. Tucker? A. \$1,541.16.

Q. All right. Now, I am going to divide by two the figure of \$3,754.79, and half of \$3,754.79 is \$1,877.39, is that correct? A. Yes, sir.

Q. What is the difference between \$1,877.39 and \$1,541.16? A. To calculate it?

Q. Well, I mean—you testified that Mr. Baker got \$1,541.16, is that right? A. That is correct, sir.

Q. You also testified that he got one-half of the fees from Dearborn and Goodkind & O'Dea? A. But that leaves him short a little bit.

Q. How do you account for it? That is what I am trying to account for. A. Well, if you were to take the joint account in Tucker & Baker you will find some expenses there which I made in his behalf and I did not pick them up; now as to the amount I just couldn't testify without having the books.

But as it stands there, he is short a couple hundred dollars.

Q. Well, he did not get the whole \$1,877.39 then? A. Yes, I would say that is correct.

Q. He did get it or did not? A. Did not.

Q. He did get one thousand five hundred forty-one dollars and sixteen cents? A. Yes, he got that amount in those checks that are listed above that.

(referring to blackboard)

Mr. Hansen: No further questions, Your Honor.

Mr. Williams: I have some further questions if I may.

Further Recross Examination

By Mr. Williams:

Q. Mr. Tucker, in response to Mr. Hansen's question, you said that Mr. Baker did get \$1,541.16. A. He got credit for that much, Mr. Williams.

Q. Yes, he didn't get that money. A. No, sir—well, he got some of it.

409 Q. The first \$25, that was drawn in 1961, by you for him was paid to Lawyers Cooperative for books, isn't that right? Those are law books. A. That is correct, sir.

Q. And the second check, drawn on the same day was paid to Matthew Bender. That was for some law books, wasn't it? A. That is correct.

Q. And the third item was paid to Goldheim, Inc., on February 16, of 1961, and those were Christmas presents that Baker bought in connection with his business, isn't that so? A. I don't know what they were for. He gave me the bill to pay it.

Q. And the fourth check which was not even drawn from the Tucker-Baker account, but drawn from your personal account, was drawn to Jose Benitez, was it not? A. That is correct. But I also put the \$1200 into my personal account from the Goodkind and O'Dea and paid that to Benitez.

Q. In any event, it was drawn not to Baker but Jose Benitez, isn't that correct? A. Yes.

410 Q. That is Jose Benitez of San Juan, Puerto Rico, husband of Reina Benitez, isn't that correct? A. That is right.

Q. And the last check which Mr. Hansen showed you, No. 70-A, was \$503, and that was in connection with the expenses Mr. Baker incurred going to the Motel Show in New York, isn't that correct? A. That is right.

Q. Mr. Hansen asked you if it was not true that the

Carousel wasn't even open in December of 1961. That is true. It wasn't open, was it? A. No.

Q. That is when you were doing the purchasing for the motel, isn't that so? A. That is right.

Q. For the furniture, for the bedding and for the drapes. Isn't that so? A. That is right.

Q. And isn't that the purpose for Mr. Baker's visit to New York at that time? A. That is right.

Q. So that that was an expenditure incurred truly on behalf of the Carousel Motel, not on behalf of Mr.
411 Tucker. A. Well, but it is my money, Mr. Williams, that we are speaking of.

Q. I understand, sir. A. And, Mr. Baker did it on behalf of the motel, and I reimbursed him out of this account, the Tucker and Baker Account.

Q. But you did not in turn bill the motel for this money? A. No.

Q. You should have billed the Motel, isn't that correct? A. No, sir, Mr. Baker should have, because he takes care of his own expenses. I take care of mine.

Q. He got the money from you? Didn't he? A. Yes.

Q. And you bill the motel on a monthly—Just a minute. You bill the motel on a monthly basis, did you not? A. That is right.

Q. You billed them for your expenses, did you not? A. That is correct.

Q. You were billing them in 1961, weren't you? A. Yes, sir.

Q. And in 1962? A. Well, at this time in 1961, I
412 wasn't billing the motel.

Q. You billed them in 1962? A. I didn't work for the motel in 1961.

Q. In 1962, did you bill them? A. In 1962.

Q. When did you begin to bill them in 1962? A. They began to build the motel in 1961, but I didn't do any work for the motel until after Mr. Novak died in 1962.

Q. That is when you billed them for your services, and expenses? A. Yes. Yes, sir, and that check was written in 1961.

Q. And you were still carrying it on your books? A. No, sir, I should have charged it against that \$1800.

Q. You haven't any explanation, have you, Mr. Tucker, on the disparity between these figures that Mr. Hansen wrote? A. You mean as to the amount?

Q. Yes. A. Yes, as a matter of fact, Mr. Williams, I have. I have been looking for it for six months and I found it yesterday. There was another five hundred dollar check which I wrote and gave Mr. Baker which puts that on the other side now.

413 There was a five hundred dollar check payable to the National Urban Redevelopment, Inc. I loaned Mr. Baker five hundred dollars, and that is one reason that it should be on the plus side.

Q. When did you lend him that money, Mr. Tucker? A. November 29, 1961.

Q. Did you borrow any money from Mr. Baker in 1961? A. Yes, I did.

Q. How much did you borrow from him? A. No, not in 1961—1962.

Q. You borrowed \$2,000 from him in '62? A. That is correct.

Q. You paid it back, did you? A. Yes, sir.

Q. Did you take off whatever he was owing you because of that loan there when you paid him back the two thousand dollars? A. No, this had nothing to do with the two thousand dollars.

Q. Do you have an explanation why you told the Grand Jury on May 12, 1965, that the referral fees were a thousand thirty-eight dollars and sixteen cents? A. Yes.

414 Q. What is that explanation, sir? A. That is what it added up to until I forgot the five hundred and three dollar check, and didn't have the knowledge concerning the five hundred dollar check.

Q. Now, when you gave Mr. Baker these figures pursuant to his request for his income from Tucker-Baker, and you gave him this figure of \$151.68, do you have an explanation for giving him that figure? A. No, as I said before, I do not know about that figure.

Q. When you gave him these figures which appear on Defense Exhibit 4 for identification, did you go to your bokes and records before you supplied him with it? A. Which exhibit number is this?

Q. Four, sir. A. Well, let me see number four. Oh, this?

Q. Yes. A. Would you repeat the question, sir?

Q. Yes, sir. When you gave Mr. Baker these figures which are figures received from Tucker-Baker, for 1958, 1959, 1960, 1961, and 1962, did you go to your records before you supplied him with these figures? A. Yes, I would have received it and have gotten those 415 from my records.

Q. And the figures for 1958, 1959, 1960, and 1962, are correct, are they not? Is that your testimony? A. Yes, sir.

Q. And the figure that you gave him for 1961, was \$151.68, was it not? A. That is it.

Mr. Williams: I have no further questions.

Further Redirect Examination

By Mr. Hansen:

Q. When did you prepare Defense Exhibit No. 4, Mr. Tucker? A. Well, it would have been sometime after 1963, when Mr. Baker would have requested that information from me.

Q. May I see the check that you mentioned, the check to National Urban Redevelopment Corporation? A. Yes, sir.

Q. Does that check represent a payment to Mr. Baker? A. It represents a payment on his behalf.

Q. All right. Then, should that—That wasn't a loan?

A. At the time it was a loan, and then it should have been balanced against the \$1,877.39.

416 Q. All right. What is the total of what you paid Mr. Baker in referral fees in 1961, then? A. Well, it would be—Now, this is not what I actually reported on my tax for the simple reason I missed those two. It would be \$1,038.16. Is that the figure? (looking at the black-board)

Q. This figure here? A. No, I am talking about the combination of the \$25's, the \$101, and \$737. What are those?

Q. This figure here? A. The one above.

Q. This figure, \$1038.16? A. Yes, it would have been those plus the \$503 plus the \$500 that I just handed you.

Q. That would make it over two thousand dollars then? A. That is right. Now, I am not saying that I actually gave these two to Mr. Baker on that calculation, for the simple reason I missed them, but I was curious myself to come up with that figure and I have been looking for it, and therefore I found this additional check.

Q. You testified that you gave Mr. Baker a reconciliation at the end of the year, is that right? A. That
417 is correct.

Q. For tax purposes?

What figure did you use? A. I would have used the \$25 figures, plus the \$101.68, plus the \$737. I neglected to use the \$503 and the \$500.

Q. How about the balance of the money received from Goodkind & O'Dea? A. Well, if you will see, the balance is in my favor now after I add the thousand dollars.

Q. Well, as I understood your direct testimony, Mr. Tucker, you said you split 50/50. A. That is right.

Q. The money from Goodkind & O'Dea? A. That is correct.

Q. And Dearborn? A. Yes, sir.

Q. Did Mr. Baker receive one-half of that money then in 1961. A. Well, he received the benefits of it by these, that you haven't asked me about. You will recall, Mr. Hansen, Mr. Williams asked me if I wrote a check directly to Mr. Baker and my answer was not, but through
418 this series of checks he received his half of the \$3700, through the \$503, the five hundred, the twenty-five dollar checks, the one-o-one, and the seven thirty-seven.

Mr. Hansen: Will Your Honor indulge me briefly?

The Court: Surely.

By Mr. Hansen:

Q. Mr. Tucker, in respect to Defendant's Exhibit 4, I believe you said that was prepared when? A. It was prepared subsequent to September of 1963 after this investigation came up and Mr. Baker requested this information.

Q. Did he say for what purpose he wanted the information?

A. No, sir, he just asked me for it.

Q. And did you have a conversation with him at that time that you gave him this exhibit 4? A. Yes, I would have had a conversation with him.

Q. What was your conversation? A. I just don't recall what it was, but I think that I explained what the Weiner and the Celler figures were there, and the others were taken from my own tax returns.

Q. All right. Did you give him any explanation about the Goodkind & O'Dea, and the Dearborn referral
419 fees? A. Well, he received that information in 1961, at the time the tax returns were filed.

Q. And this is what in relation to that, then? A. Well, this is the expenses of 1961—I am sorry—1961 through 1958. That is merely the income which we split during that year. Now, I think that is where Mr. Williams is looking at the wrong thing. He is looking at expenses, when in fact it is income.

Q. What was the actual income then? A. For the year, 1961?

Q. Yes, sir. A. The Goodkind and O'Dea, and the Dearborn Machinery is \$3,754.19. Is that the year you want?

Q. Yes. A. Well, that is for the year, 1961.

Q. All right. A. And 1962, there is none which was accounted to Baker.

Q. All right. Now, how much of the Goodkind & O'Dea and Dearborn Corporation receipts did Mr. Baker get in 1961, then? A. Well, he got the benefit of approximately two thousand dollars, namely, through a five hundred dollar check, a \$503 check, a \$937 check to Mr. Benitez, and a \$101.68 check to Goldheim, and two \$25 checks to the law book companies. As actual cash he received none.

Q. But these were expenses you paid for Mr. Baker is that right? A. That is correct.

Mr. Hansen: Thank you.

Further Recross Examination

By Mr. Williams:

Q. Mr. Tucker, you said you advised Mr. Baker with respect to the amount of the referral fees that he received on these two accounts. Did you give him a 1099 form? A. No, sir.

Q. Do you know what a 1099 form is? A. Yes, sir.

Q. Did you give him one of those? A. No, sir.

Q. You did not? Two years after the fact, in 1963, when he asked you to give him an itemization of fees received from you, for five years, you told him it was \$151.68 for 1961, did you not? A. No, those were expenses.

421 Q. These are expenses. A. Yes, sir, these are expenses. This is 1961. These are expenses.

Q. Well, didn't you just tell me a few moments ago, Mr. Tucker, when I was questioning you, that for 1962, the figure, none, meant he received no income; and the figure for 1960 of \$6,160.62 meant he received that in income; in 1959, \$645.19 meant he received that in income. In 1958,

\$1330 meant that he received that in income. Didn't you tell me that a few minutes ago? A. I don't think so. If I did I didn't mean to. Because you were adding these up from those figures there, and I told you that I did not know what these—\$151.68 was.

Q. But the other figures, from the other years was the amount of income Mr. Baker received from you, is that correct? A. That is correct.

Q. But the one figure of 1961, is not income; that is expenses; is that what you are saying? A. No, I don't say that at all. I said originally I wasn't certain of that figure, and you added them up to those figures there. I personally do not know.

Q. Mr. Tucker, will you please listen to my question now. There were five figures here for five different years, 1958, 1959, 1960, 1961, and 1962, is that correct? A. That is correct.

Q. Now, each of those; the figure of 1958, is the amount of income that Mr. Baker got: \$1330. Is that right? A. Yes, sir.

Q. The figure of \$645.19, is the amount of income that Mr. Baker got in 1959, is that right? A. That is right.

Q. The figure of \$6,160.62 is the amount of income he got from you in 1960, is that correct? A. That is correct.

Q. And the figure in 1962, none, is the amount of income he got from you in 1962? A. Right.

Q. Well, isn't the figure of \$151.68, which stands beside the year, 1961, what you told him he received from you in the year, 1961? A. Absolutely not, Mr. Williams.

Q. That figure, apart from all the others is an expense figure? A. I didn't say it was expense; you added up those figures. The Government exhibit shows on my income tax that I received approximately \$3,754 in income from two clients. I discussed this with Mr. Baker and I gave him a recalculation of it.

Q. But when you gave him this particular calculation, four of these items were intended to be income items, but

for 1961, the \$151.68 item was an expense item; is that your testimony? A. No, sir, I did not testify that this was an expense item: I testified that I didn't know what it was.

Q. And you didn't expect Mr. Baker to know what it was either, I take it. A. I gave Mr. Baker a separate calculation in the year, 1961, on the income and the expenses.

Q. Well, Mr. Tucker, when you wrote the figure, \$151.68 down, and gave it to Mr. Baker in response to his request for the amount of income he received from you for each of those five years, how did you compute those figures? A. I actually don't know.

Q. When was it, Mr. Tucker, that you determined to convert the check of November 29, 1961, in the amount of \$500 payable to the National Urban Redevelopment Corporation, and endorsed for deposit to the account of the National Urban Redevelopment Corporation—When
424 was it that you determined to convert this on your books and records from a loan to income to Mr. Baker? A. It never has been, as a matter of fact, Mr. Williams. On the recalculation that I did of this, together with the testimony that I gave to the Grand Jury, I determined myself that I was short in accounting to Mr. Baker. I knew there must be a reason so I have been through all my records and I find out I gave this check to Mr. Baker. He and I were downtown, and met with some other lawyers. I happened to have a check in my pocket. I wrote a check in his behalf for this organization and then I should have charged it against him in this year, 1961. I didn't. I neglected to.

Q. So it was a loan to Mr. Baker? A. Yes, sir, it is listed on my check stub as a loan.

Q. It is still carried on your books as a loan? A. No, sir.

Q. When did you change it? A. I never loaned—

Q. (continuing)—from a loan to payment to Baker? A. I never carried it on the books as a loan. I marked it in

my check stubs for the purpose of calculating it as to my income what the payments were and the disbursements.

425 Q. When you prepared your 1961 return, and you came across this check, how did you treat this, sir?

A. Unfortunately, I didn't treat it at all.

Q. You didn't look at this check? A. I did not treat this check as either an expense, which I deducted or either as a debit against Baker.

Q. Did you go through your checks when you prepared your 1961 return? A. Yes, sir.

Q. Did you regard it as a loan when you went through your check? Is that why you didn't take an accounting of it on your return, sir? A. No, I didn't regard it as a loan for the simple reason that Baker didn't actually owe me any money as such. I made the notation for the purpose of refreshing my own memory at the time I would have calculated it and it didn't refresh me.

Q. You wrote the word, "loan" on the check stub? A. "Personal Loan."

Q. "Personal Loan"? But you didn't regard it as a personal loan? A. No, I did not.

Q. Why did you write the word, personal loan, 426 down on the check stub? A. Just for the purpose of jogging my memory when I would have had an accounting with Baker.

Q. You wrote it down to jog your memory when you had an accounting, but you didn't regard it as a personal loan? A. Well, he owed me five hundred dollars.

Q. Well, then, it was a loan? A. Well, I just regard it as an amount of money that I would "balance out," with him.

Q. This was made from your personal account, was it not, Mr. Tucker? A. That is right.

Q. Not from Tucker & Baker? A. From my personal account.

Q. Your personal account. You had a Tucker & Baker account at the McLaughlin Bank, didn't you, at this time? A. Yes.

Q. This was made from your personal account at Riggs Bank, was it not? A. Yes, sir.

Q. Thereafter, Mr. Baker lent you money, did he not? A. That is right.

Q. He lent you money in 1962? A. In 1962, which I repaid.

427 Q. How many times did he lend you money in 1962? A. Just that one time—other than the fact that someone may have given someone five dollars because he didn't have any change. But we are talking about a loan as such. One time, in 1962.

Q. A substantial loan as distinguished from a petty loan. A. Yes, two thousand dollars.

Q. Were there any loans in 1961 other than this? A. Not that I have any memory of.

Q. You don't recall any other loans? A. No, sir.

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434 Cross Examination (resumed)

By Mr. Williams:

Q. Mr. Tucker, yesterday during your examination by Mr. Hansen, you testified, I believe, that in 1962 toward the end of the year, and I think you fixed it either in October or November, Mr. Baker made you a loan of \$2,000? A. That is correct, sir.

Q. Was that in October or November, sir. A. I am not positive, Mr. Williams.

Q. And I believe you also testified, sir, that the loan that was made to you, was in cash? A. Yes, sir.

Q. When Mr. Baker made that loan to you in cash, 435 he had in his pocket and removed, cash from two government pay envelopes, is that correct? A. That is right, sir.

Q. Mr. Baker was then an employee of the Government, was he not? A. Yes, sir.

Q. Of the Senate specifically. And his wife was also a government employee? A. Correct.

Q. When he lent you this money, he removed it from pay envelopes, is that correct? A. Correct.

* * * * *

438 By Mr. Hansen:

Q. Mr. Tucker, you asked to clarify some testimony
439 given yesterday and, as I understand it, that relates to a loan that Mr. Baker obtained from the Fidelity National Bank in Oklahoma City, is that right? A. That is correct.

Q. And I believe you testified yesterday the Carousel Motel did not borrow money from the Fidelity National Bank, is that right? A. That is correct.

Q. And you wanted to clarify that, now, that Mr. Baker did what the Carousel did not? A. Yes, sir.

Q. Is that the substance of what your correction is? A. Yes, sir.

Mr. Williams asked me if Mr. Baker had ever mentioned to me the loan which he made, and I said in substance, I did not think he had but on reflection, I am sure Mr. Baker discussed with me that he, personally, had a loan with the Fidelity National Bank in Oklahoma City.

Mr. Hansen: Thank you, Mr. Tucker.

The Court: Mr. Williams.

Recross Examination

By Mr. Williams:

Q. That was the Fidelity National Bank and Trust Company of Oklahoma City, was it not? A. Yes, sir.

440 Q. And the amount of the loan made in 1962 by Mr. Baker was \$250,000, was it not? A. That sounds approximately correct.

Q. And you knew, did you not, that it was Senator Kerr who made the arrangements to make that loan? A. Yes, sir.

* * * * *

Thereupon

Juanita Thomas

a witness called by counsel for the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Will you please state your name? A. Juanita Thomas.

Q. Please spell the last name? A. T-h-o-m-a-s.

Q. What is your business or occupation? A. I am secretary to Senator Smathers.

Q. For how long have you been in the employ of Senator Smathers? A. Twenty years.

441 Q. And were you his personal secretary? A. Yes.

Q. And were you so employed during the year 1961 and 1962? A. Yes.

Q. Are you personally familiar, Miss Thomas, with an agreement entered into between Senator Smathers, Scott Peek, his administrative assistant, and the defendant, Robert G. Baker? A. Yes, sir.

Q. I now show you Government Exhibit 25 marked for identification and ask you if that appears to be a copy, the original of the trust agreement? A. This is the original.

The Court: Has Mr. Williams seen it?

Mr. Bittman: Mr. Williams has been tendered copies of all this material.

The Court: Very well.

The Witness: This is the original.

By Mr. Bittman:

Q. And you typed it out, yourself? A. I typed it.

Q. And there are original signatures on the second page of that trust agreement. I believe they are signed Senator Smathers, Scott Peek and Robert G. Baker. Did you

442 witness those signatures? A. Yes, I did.

Q. What is the date of that trust agreement, please? A. May 29, 1957.

Q. Directing your attention, Miss Thomas, to 1961 and 1962, did there come a time when certain checks were sent to Robert G. Baker as a result of that trust agreement?

A. Yes.

Q. And did you personally handle that entire transaction? A. Yes, I did.

Q. Would you please state to his Honor, Judge Gasch, the ladies and gentlemen of the jury, the general procedures that you employed in handling this particular financial transaction? A. Well, this property was located near Orlando, Florida. The Senator's cousin, Ben Smathers, was in charge of the transaction. He would forward to me as receipts came in from sale of the property, and from other income from the property certain checks, usually with the covering memorandum, and I would send—divide the proceeds according to the share which Mr. Baker and Mr. Peck

443 held, which was a one-eighth share of the Senator's interests and transfer to them the check covering their share.

Q. Do you know whether or not Robert G. Baker paid Senator Smathers \$1500 for, as part of his agreement? A. A check was received from Scotty Peek for \$3,000 but it represented the total of his share and Mr. Baker's share.

Q. Did you, personally, keep records relating to this transaction? A. Yes, I did.

Q. I now show you Government exhibit marked 25-A for identification and ask you if that is a copy, and ask you what that purports to be.

Q. Well, as the checks came in from Mr. Ben Smathers, or even the check originally paid out by the Senator, I would make an entry in a sort of a ledger and as other checks came in, I made an entry to that effect and then showed the disbursements to Mr. Baker and Mr. Peek.

Q. And that ledger is kept in your own handwriting, is it not? A. Yes, it is.

Q. And that covers the scope of most of the entire transaction? A. Yes, it does.

Q. During 1961 and 1962 you sent checks to Robert G. Baker, did you? A. Yes.

444 Q. Would you also send memoranda to Mr. Baker? A. Yes.

Q. Generally speaking, what would those memoranda represent? A. Well, they would detail the nature of the check, whether the check was for interest or what, proceeds of the memorandum from Ben Smathers or just exactly what the nature of the check was.

Q. Would you designate in any other place what the nature of the check was for? A. Yes. I put it on the face of the check.

Q. And you handled the checks, yourself, did you not? A. Yes.

Q. I now show you government exhibit 26 through 56-A, I will ask you kindly to go over these one by one and designate very briefly what they are. A. Do you want me to give dates and amounts?

Q. I think, if you would be so kind, please. A. All right.

Mr. Williams: First, may we see 25-A, please, your Honor, because I do not have a record of what 25-A is.

Mr. Bittman: Do you have all the others?

Mr. Williams: I think so. I will know when I see them.

445 Mr. Bittman: All right.

By Mr. Bittman:

Q. Miss Thomas, you may proceed. A. The first is a check dated March 30, 1961 in the amount of \$268.75. It is payable to Robert G. Baker and it shows on the face of the check it is for his share of the interest received on the Dommerich property, the Orlando property was referred to as Dommerich estate.

The second is a check dated August 28, 1961, and payable to Robert G. Baker and it shows that it is a one-eighth share of the sale price of a strip of land which had be be repurchased.

Q. Miss Thomas, would you designate those as Government exhibit numbers for the record. I think you did it for the first one. A. No, I did not.

The first was Government Exhibit 26, and the second was No. 27. The third is Government exhibit 28. The check dated October 27, 1961, payable to Robert G. Baker in the amount of \$268.75. It shows on the face of the check that it is a one-eighth share of the interest payment of \$2,150 received in connection with the Orlando property.

Government Exhibit No. 29 is a check dated October 27, 1961, payable to Robert G. Baker in the amount of 446 \$190.63. It shows it is a one-eighth share of a payment of \$1523 on a lot. 5-D, in the Orlando property.

Third is Government exhibit 30, a check dated October 27, 1961, payable to Robert G. Baker in the amount of \$232.29. It is a one-eighth share of a payment of \$1858.33, payments on Lots 2-G and 4-B.

Government exhibit No. 32 is a copy of a memorandum dated October 27, which I wrote transmitting checks in the amount of \$268.75, one in the amount of \$190.63 and one in the amount of \$232.29.

Government exhibit 32 is a check dated February 14, 1962 payable to Robert G. Baker in the amount of \$381.25. It is a one-eighth share of a check for \$3,050.

The proceeds as listed in the memorandum of November 8, 1961, that refers to a memorandum received from Ben Smathers dated November 8, 1961.

Government Exhibit 33 is a check dated February 14, 1962, payable to Robert G. Baker in the amount of \$208.33.

It is a one-eighth share of a check of \$1666.66. Of the proceeds as listed in the memorandum of November 27, 1961.

Government exhibit No. 34 is a check dated February 14, 1962 to Robert G. Baker in the amount of \$512.50. It is a one-eighth share of a receipt of \$4100 listed on memorandum of December 28, 1961.

447 Government Exhibit 35 is a copy of my memorandum to Scotty and Bobby, transmitting the last three checks.

Government Exhibit No. 36 is a check dated February 14, 1962, to Robert G. Baker in the amount of \$381.25 and it shows on the face of the check that it was a one-eighth share of a payment of \$3050 listed on memos of January 22, 1962.

Government exhibit 37 is a check dated February 26, 1962 for \$83.33, a one-eighth share of the proceeds listed on the memo of February 15, 1962.

Government exhibit 38 is a copy of my memo transmitting the two checks for January 22 and February 15, 1962.

Government Exhibit 39 is a check dated April 12, 1962 in the amount of \$465.81.

It says one-eighth share of a payment of \$3,750.26.

The Court: Do you have any objection?

Mr. Williams: I think she skipped a check.

Mr. Bittman: Perhaps they are out of order. If they are, it is my fault.

The Witness: No, No. 38 was a memorandum.

The Court: Was 39?

The Witness: 39 is a copy of a check. I mean is a check dated April 12, 1962 in the amount of \$465.61.

448 The Court: It is listed on the memorandum as 40.

Mr. Bittman: We did our best to get all the records in order. I guess we made a mistake.

The Court: If it is just a switch.

The Witness: It is one-eighth share of the payment of \$3,726.50 received with a memorandum of March 22, 1962.

The Court: The amount of that is \$465.81?

The Witness: Yes, sir.

The Court: Thank you.

The Witness: And then the Government exhibit No. 40 as identified here, is a check dated April 1, 1962 in the

amount of \$41.66. It is a one-eighth share of a payment received with memorandum of March 1, 1962.

The Court: I think, Mr. Williams, in order to keep our data straight we will just switch those two numbers.

The Witness: Government exhibit No. 41 is a check dated April 12, 1962 in the amount of \$357.29, for one-eighth share of a payment of \$2858.33 received with a memorandum of April 6.

Government Exhibit No. 42 is a copy of my memorandum dated April 14, 1962 transmitting the last three checks to Mr. Baker and Mr. Peek.

Government Exhibit 43 is a check dated April 30, 1962, in the amount of \$148.96. It is a one-eighth share of
449 a payment of \$1191.67 received with the memorandum of April 30.

Government exhibit 44 is a copy of my memorandum transmitting that check.

Government exhibit No. 45 is a check dated May 22, 1962 in the amount of \$446.88. It is a one-eighth share of a payment of \$3,575 received with a memorandum of May 18, 1962.

Government exhibit No. 46 is a copy of my memorandum transmitting that check.

Government Exhibit No. 47 is a check in the amount of \$148.96 which is a one-eighth share of a payment received with the memorandum of June 1, 1962.

Government exhibit 48 is a copy of a memorandum transmitting that check.

Government exhibit 49 is a check dated September 28, '62 in the amount of \$41.67, share of sale, with memorandum of August 16.

Government Exhibit 50 is dated September 28. It is a check dated September 28, 1962 in the amount of \$220.08. It is a share of a sale in the memorandum of September 4.

Government Exhibit No. 51 is a copy of my memorandum dated October 4 transmitting those two checks.

Government exhibit 52 is a check dated Sept. 6, 1962 in the amount of \$804.65. It represents the share of proceeds, and a memorandum dated October 2, October 11, and October 24 and November 16.

Government Exhibit 53 is a copy of the memorandum transmitting that check.

Government Exhibit 54 is a check dated December 29, 1962 in the amount of \$200.65. It is a share of the proceeds received with the memorandum of December 14.

Government Exhibit 55 is a check dated January 29, 1963 in the amount of \$165.63.

It is a share of the proceeds received with the memorandum of December 31.

Government exhibit 56 is a copy of a memorandum which I wrote to Mr. Baker and Mr. Peek on St. Patrick's Day, 1962, although the date 1962 does not show on the memorandum, transmitting a copy of the memorandum received from Ben Smathers with respect to income taxes.

Government Exhibit No. 56-A is a copy of a memorandum which I wrote to Mr. Baker and Mr. Peek on March 26, 1962, further explaining the income tax memorandum.

Mr. Bittman: As you have testified, Miss Thomas, from time to time, you would attach a memorandum with the checks, is that correct? A. Yes.

451 Q. What, if anything, would you do with the filled-out check in the memorandum? A. Well, I should say, I usually gave Mr. Peek's checks to him since he was right in the office and I either mailed or sent Mr. Baker's over to him.

Q. I see.

Now, you are the one that typed out the checks, yourself, are you not? A. Yes, I did.

Q. Are you familiar with the signature of Senator George Smathers of Florida? A. Oh, yes.

Q. Do all those checks you previously examined bear his original signature? A. Yes, they do.

Q. Are all these records kept in the care, custody and control of yourself as a personal secretary of Senator Smathers? A. Yes, they have been.

Q. And these are business records kept in the ordinary course of business? A. Yes.

Cross Examination

By Mr. Williams:

Q. Miss Thomas, as I understand it, from your
452 testimony in response to Mr. Bittman's questions, Senator Smathers sold to Mr. Baker and Mr. Scott Peek, a one-quarter interest, divided equally between them? A. Yes, sir.

Q. Of interest in some land that he had near Orlando, is that correct? A. That is right.

Q. And Mr. Peek acquired one-eighth of that and Mr. Baker acquired one eighth of that; is that correct? A. Yes.

Q. And they paid Senator Smathers \$3,000 for that one-eighth interest? A. Yes.

Q. And that transaction was consummated in 1958, was it not? A. 1957.

Q. 1957. And Government Exhibit 25, I believe, is the agreement which sets up that transaction, right? A. Yes, that is correct.

Q. Now, Mr. Peek, at that time, Miss Thomas, was Senator Smathers' Administrative Assistant, was he not? A. I am not sure that he had become administrative assistant at that time. He was acting in an administrative capacity for the Senator.

Q. In other words, he was an employee? A. Yes.
453 Q. In the Senator's office? A. Yes.

Q. And whether he was administrative assistant at that time, you do not know? A. I do not recall.

Q. But he subsequently— A. He subsequently became administrative assistant, if he was not at that time.

Q. And Mr. Peek you knew to be a close personal friend of Mr. Baker's, is that correct? A. Yes.

Q. Beginning in 1961 in accordance with the Government's Exhibit No. 26, a check was sent to Mr. Baker in the amount of \$268.75, is that correct? A. Yes.

Q. And it shows or it is shown that this is the interest on the Domerick estate, is that what it was called? A. That was how the property was referred to.

Q. That was a tract of land? A. Near Orlando.

Q. And the interest income would be interest received from purchasers who were acquiring this land and
454 making installments, is that correct? A. Yes, and this, of course, would be the interest on the unpaid balance.

Q. Yes.

Now, so government exhibit No. 26 would represent interest income but government exhibit 27 would be actually—strike that, please.

Because government exhibit 27 recites one-eighth share sale price for a strip of land repurchased \$19.91 do you know what that was? A. As I recall, apparently this was at the time they sold a large section of this land and they made a mistake in drawing the lines, whatever you call them, and so Mr. Ben Smathers and Mr. Andrews, who was one of the owners, and Senator Smathers, had to repurchase a part of the land which they thought had been sold.

Q. Now, we come to No. 28, and this is a check in the amount of \$268.75, drawn on October 27, 1961 by Senator Smathers and that represents Mr. Baker's share in the sale of a parcel of land. A. No, this one represents interest again.

Q. Excuse me. One-eighth share interest. Those are the two interest payments, are they not, in 1961? A. I do not recall if there was another one but probably not because they were usually only two in a calendar year.

455 Q. I see.

In 1961 on the same date you have a check in the amount of \$190.63 drawn by Senator Smathers to Mr.

Baker, and that is the share of the purchase price of a lot which was sold for \$1525, is that correct? A. Yes.

Q. In other words, they sold a lot in which they had a one-eighth interest. In which Mr. Baker had a one-eighth interest and Mr. Peek had a one-eighth interest and Senator Smathers had whatever interest he retained. What was Senator Smathers' interest? A. His interest started at $13\frac{1}{3}$ per cent and he and Mr. Ben Smathers brought out two of the other partners and Senator Smathers had a one-third interest.

Q. Again in 1961, in accordance with Government's Exhibit 30, there was paid to Mr. Baker, \$232.29 as a one-eighth share in the purchase of two lots, 2-G and 2-B which was sold for \$1858.33, is that right? A. Yes.

Q. So they, in effect, were selling a part of their one-eighth interest in the Domerick estate? A. Yes.

Q. That was a large tract, was it, of unimproved land? A. I do not remember the acreage but it must have been fairly large.

456 Q. A large tract near Orlando? A. It was not entirely unimproved land. There was at one time an orange grove on part of it.

Q. An orange grove? A. Yes.

Q. Now, those checks to which I have just referred, Miss Thomas, which are Government exhibits 26, 27, 28, 29 and 30, were all the checks that were actually received by Mr. Baker and Mr. Peek during the calendar year 1961, is not that so? A. Yes, sir.

Q. Now, beginning in February of 1962, some further checks were sent to him? A. Yes.

Q. Without going through all of the checks I will ask you whether or not Government exhibits 32, 33, 34, 36, 37, 39, 40, 41, 43, 47, 49, 50, 52—I am going to ask you to hold the letters for a minute—54, 55. I am asking you, and you look back through these and state whether or not these checks which were sent by Senator Smathers during 1962 and made payable to Mr. Baker in varying amounts on

various dates do not all constitute proceeds from the
 457 sale of lots on Domerick Estate? A. There is one
 here which says it is a share of payments listed on
 the memorandum of January 22, 1962, which refers to a
 memorandum from Ben Smathers. I do not identify the
 nature of the transaction on that check.

Q. Do we have that memorandum here among these,
 do you know? A. I don't know whether Ben Smathers'
 Memo—I don't believe they are there except for this one.

Q. I see. All right. Go forward and look at those. A.
 The check dated February 26, 1962, also is identified only
 as referring to the share of proceeds listed on memorandum
 from Mr. Smathers dated February 15, 1962.

The check dated April 12, 1962, is identified only as a
 share of a payment received with the memorandum dated
 March 22, 1962.

The check dated April 12, is identified as a share of a
 payment received with memorandum of March 1, 1962.

Another check dated April 12 is also identified only as
 one-eighth of the proceeds received with the memorandum
 from Mr. Smathers dated April 6. The check of April 30,
 1962, is identified as a one-eighth share of a payment re-
 ceived with memorandum dated April 30.

The check dated June 6 is identified as a share of a pay-
 ment received with memorandum dated June 1, 1962.

The check dated September 28, 1962, is identified
 458 as a share of a sale received, the proceeds were
 received with a memorandum dated August 16.

The check dated September 28 is identified as the share
 of the sale, the proceeds were received with th memorandum
 dated September 4.

A check dated December 6 is identified as a share of
 the proceeds received with memorandum dated October 2,
 October 11, October 24, and November 16.

The check dated December 29, 1962, is identified as a
 share of the proceeds received with memorandum dated
 December 14. And the check dated January 29, 1963, is
 identified as the share of the proceeds received with the
 memorandum dated December 31.

Q. Are you able to identify, Miss Thomas, other than the checks which we looked at, at the outset in the amount of \$268.75 in 1961, any other interest payments? A. Not from these checks.

Q. But you would be able to identify it from the correspondence, any other interest payments? A. Are these in order?

Q. I am sorry, they are not. I am putting them back in order. I am putting them in chronological order
459 for you. A. In Government Exhibit No. 35, which is a copy of a memorandum which I wrote to Mr. Baker and Mr. Peek on February 22, I said "I am enclosing file copy of memorandum from Ben Smathers together with the Senator's check representing your share of the proceeds," and then I set forth the amounts of the check. I go on to say, "This takes care of all of the payments we have received in 1961." There are a couple more which covers sales in 1962.

Q. Now, these checks which you sent to Mr. Baker dated November 8— A. No, the memorandum from Ben Smathers was dated November 8.

Q. But the final 3 checks that Mr. Baker received for his share of the proceeds of the sale of lots in 1961 were actually given to him in February 1962, isn't that so? A. That is correct.

Mr. Williams: I have no further questions.

Redirect Examination

By Mr. Bittman:

Q. Miss Thomas, in connection with those same three February 14, 1961—'62 checks that Mr. Williams just referred to, is it not a fact that you designated on the face of those checks that it was '61 income and also on your
460 St. Patrick's Day memorandum you listed it that he should report it as income, isn't that correct? A. Yes, that is correct.

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461 Whereupon,

Ralph Hill

witness called by counsel for the Government, having been duly sworn according to law, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your name? A. Ralph Hill.

Q. Where do you reside? A. 4220 Fordham Road, N. W., Washington, D. C.

Q. What is your present business or occupation? A. Consultant, Automatic Vending, Laurel, Maryland.

Q. Was there a time when you were associated with Capital Vending? A. There was.

Q. Where was that located, Mr. Hill? A. 23 Eye Street, N. W.,—D. C.

Q. And when were you associated with them, sir? A. From 1954 through 1963.

Q. Directing your attention, Mr. Hill, to 1962, what
462 was your capacity with Capital Vending? A. Vending Machines. Dispensing cigarettes, candies, coffee, et cetera.

Q. Now, in 1961, did you have a conversation with Robert G. Baker? A. I did.

Q. Do you know Robert G. Baker? A. I do.

Q. Do you see him present in the courtroom? A. He is.

Q. Would you point him out, please? A. Third gentleman sitting at the table with Mr. Williams.

Mr. Bittman: May the record indicate, Your Honor, that the witness has correctly identified the defendant?

The Court: Yes.

By Mr. Bittman:

Q. Do you recall approximately when that conversation was in 1961? A. Which conversation are you referring to?

Q. The first conversation that you had with Mr. Robert Baker in connection with the possibility of obtaining
463 a contract with MELPAR. A. I met him at the University Club I think in late February or early March, 1962.

Q. And did I say 1961? 1962. That was at the University Club? A. That is correct.

Q. To the best of your recollection, who was present? A. I met him alone and then I was joined—we were joined by a Mr. Hancock.

Q. Did you have a conversation alone with Mr. Baker at that time? A. Only briefly for approximately maybe 2 or 3 minutes.

Q. Would you state to the best of your recollection what was stated at that time between yourself and Mr. Baker? A. He asked me to take a friend of his, who was in the vending business, to MELPAR.

Q. What is MELPAR? A. Melpar is, or was to the best of my recollection a manufacturing and engineering for electronics.

Q. And where were they located? A. Falls Church, Virginia.

Q. You know of your own knowledge who was President of MELPAR during that period of time?
464 A. Mr. Edward Bostick.

Q. Pursuant to that conversation, you had with Mr. Baker, did you and Mr. Hancock go to Melpar? A. We did.

Q. When you arrived at MELPAR, did you have a conversation with Mr. Bostick, the President? A. We did.
contract with MELPAR? A. We did.

Q. After you went to MELPAR and had the conversation with Bostick, did Capital Vending enter into a contract with MELPAR? A. We did.

Q. Did you have any conversation with Mr. Baker in connection with that contract prior to the date of your contract? A. I think I may have discussed it with him on the telephone once or twice.

Q. Well, did you recognize Mr. Baker's voice on the telephone? A. I did.

Q. To the best of your recollection, what was stated on the telephone with Mr. Baker prior to the contract that Capital Vending entered into with MELPAR? A. I think there was some trouble as to our financial
465 ability, or ability to perform, or at least doubts by MELPAR, and I called Mr. Baker, and indicated we were going to to put up a performance bond to guarantee our performance.

* * * * *

468 Q. Have you had an opportunity to examine that exhibit, Mr. Hill? A. I have.

Q. Does that appear to be a true and correct copy of the original contract Capital Vending entered into with MELPAR? A. It does.

Q. After the date that that contract was entered into, did you have another conversation with the defendant, Baker? A. I did.

Q. About how long after that contract was entered into? A. Sometime in April 1962.

Q. And would state exactly what happened to the best of your recollection? A. I called Mr. Baker, asked him if I could come over and see him. He said, "Come over." I did go over and see him.

Q. Where did you go to see him? A. At his office at the Capitol.

Q. That was the Office of the Secretary of the Senate Majority? A. That is correct.

Q. Did you have a conversation with him at that
469 time? A. I did.

Q. To the best of your recollection, who was present? A. No one.

Q. Well, yourself and Mr. Baker were present. A. That is correct.

Q. Will you please state to the Court and to the jury to the best of your recollection what was said by yourself, and what was said by Mr. Baker at that time and place? A. I thanked him for helping me or aiding me in getting the contract at MELPAR. And to the best of my recollection asked him what type of whiskey he drank, and he stated that I was going to make a profit at MELPAR. Therefore, we entered into financial negotiations whereby that I wound up offering—

Q. (interrupting) Before you wound up, what was the discussion that you had with Mr. Baker after you mentioned, after you asked him what kind of whiskey he drank? A. He indicated he thought the contract was worth a thousand dollars a month, and I told him that we were small and the contract was not worth a thousand dollars a month to us because we were selling drinks for five cents, and—cold drinks, that is—and therefore I could not generate enough profit to cover expenses, and also
470 pay a finder's fee, or whatever you want to call it of a thousand dollars. And so I promised to give him a profit and loss statement from MELPAR each month, which I did for a few months—

Q. Did you ask for a profit and loss statement or did you gratuitously offer one to him? A. I can't recall whether he asked for one, or offered it. I think he asked for it.

Q. I see. A. And before I left the office I agreed to pay him two hundred and fifty dollars a a month, and furnish him a profit and loss statement of MELPAR's Vending operation.

Q. Now, what discussion did you have with Mr. Baker at that time and place relative to the two hundred and fifty dollars a month? A. I did not understand you.

Q. What conversation did you have with Mr. Baker at that time and place with that two hundred and fifty dollar monthly payment? A. That it would be paid in cash each month.

Q. Did you have any other discussion? A. We may have had. I don't recall.

471 Q. Have you exhausted your recollection? A. Generally, I have.

Q. Was there a discussion about his law firm? A. Yes, there was a discussion that another firm had offered to pay a thousand dollars a month to his law firm but he preferred to have it in cash since I would pay it in cash.

Q. Now, during 1962, did you make cash payments to Mr. Baker? A. I did.

Q. How many cash payments did you make? A. April through December.

Q. Which would be eight payments, is that correct? A. That is correct.

Q. Did you make one a month? A. Not necessarily. There were months I made two payments in one month.

Q. How were these payments to be made? A. In cash.

Q. Well, I mean physically, what would you do to give Baker the money? A. I would ask my Treasurer—of Capital Vending—to prepare an envelope with two hundred and fifty dollars contained therein, for delivery to
472 whom it was none of his business, and then I would take that envelope with two hundred and fifty dollars to Mr. Baker whenever I could catch him in.

Q. Did you always give those payments to Mr. Baker personally? A. I did.

• • • • •

481 Thereupon,

Edward M. Bostick

was called as a witness on behalf of the Government, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Mittler:

Q. Sir, would you state your full name? A. Edward M. Bostick.

Q. What is your present home address, Mr. Bostick? A. Mount Vernon, Virginia.

Q. What is your present business? A. I am in the aerospace business.

Q. Mr. Bostick, do you know the defendant, Robert G. Baker? A. I do.

Q. Do you see him in the Court Room? A. I do.

Q. Would you point him out, please? A. The gentleman right over there.

Q. At the end of the table? A. Yes.

Q. How long have you known Mr. Baker, Mr. Bostick?

A. Since late '61 or early '62.

482 Q. Directing your attention to early 1962, what was your business or occupation at that time? A. I was President of Melpar, Inc., an aerospace firm.

Q. And where is Melpar located? A. Well, there were plants all over the country; the main office is in Virginia, Falls Church.

Q. Is that the office that you were associated with. A. It is.

Q. Also directing your attention, Mr. Bostick, to the early part of 1962, specifically to February, did you have a conversation with the defendant, Robert G. Baker, regarding the vending contract at Melpar? A. I did.

Q. Where did that conversation take place? A. Mr. Baker phoned me.

Q. Did you recognize— A. In my office.

Q. Did you recognize his voice? A. I did.

Q. Would you tell the ladies and gentlemen of the jury what Mr. Baker said on that occasion? A. Mr. Baker asked me if a friend of his could come out and bid on my
483 vending business at Melpar. That is the Coca Cola, coffee, and what have you.

Q. Did he identify during the course of this conversation who that friend was? A. I am not sure. I don't recall. He probably did, Mr. Mittler. I don't recall.

Q. Did he identify the company with which this friend was associated? A. He did not in that conversation.

Q. At the time of this conversation, Mr. Bostick, who had the vending contract at Melpar? A. Nationwide—no, Macke—I am sorry, Macke Vending had the vending contract.

Q. During this conversation did Mr. Baker indicate to you any interest that he had in this vending contract? A. His only indication was that a friend of his might have an interest in it.

Q. What if anything happened subsequent to this conversation? A. Two gentlemen came out to the plan to look into the vending situation.

Q. And who were those two gentlemen? A. Mr. Hill and a gentleman from Florida whose name escapes me.

484 Q. Have you exhausted your recollection? A. I am sorry, I have.

Q. Would it be Mr. Hancock? A. It was Mr. Hancock.

Q. Subsequent to this, did Mr. Hill submit a bid on the vending contract at Melpar? A. Yes, he did.

Q. Did any other companies submit a bid? A. They did not.

Q. Who was awarded the contract? A. Capital Vending.

Q. Do you know when this contract was awarded? A. I do not. I turned it all over to my assistant after the initial conversations and I have no recollection of that.

Q. For what reason, Mr. Bostick, did you give Capital the opportunity to bid on this vending contract? A. Because I wanted to do Mr. Baker a favor. Mr. Baker was a friend of mine.

Q. Now, Mr. Bostick, directing your attention to the latter part of 1963, did you have a conversation with the defendant, Robert G. Baker, regarding his receipt of commissions in connection with this vending contract?

485 A. I knew nothing about any finder's fee on the part of Mr. Baker, or commission, until after he was sued by Capital Vending. Indeed of my own knowledge I don't know to this day that Mr. Baker received a finder's fee.

* * * * *

Cross-examination

By Mr. Williams:

Q. Mr. Bostick, do you recall when it was that Capital Vending actually began operations inside of Melpar? A. I think it was sometime in '62, but I couldn't be sure.

Q. You can't fix a month for us, sir? A. No, sir, I can't.

Q. Did you find Capital Vending Company to be a more satisfying vending operator than the predecessor? A. I would say the vending operations were about the same but we made 20 per cent more from Capital Vending which was credited to the Government under the overhead system there.

Q. Was that the reason you selected Capital Vending over Macke after their bid was submitted? A. Mr. Williams,

I'd like to answer it this way, the reason Mr. Hill
486 bid was because Mr. Baker asked me. The reason he was selected was because we obtained more money for the operations from Mr. Hill.

Q. When you say "we"— A. I mean Melpar and the Government.

Q. Got more money? A. Exactly.

Q. Under the Capital Vending operation then you had under Macke; is that right? A. That's right.

Q. And the reason for that is because you were paid higher commissions on the sales that were made at your plant than you were by Macke; isn't that so? A. That is correct.

Q. And that brought about a saving to Melpar and return to the Government, the United States; is that correct? A. That is correct.

Q. Did you have any objection, Mr. Bostick, to Capital Vending paying Mr. Baker a finder's fee to this matter?

Mr. Mittler: I object to that, your Honor. He said he didn't know.

The Court: I will sustain the objection.

487 By Mr. Williams:

Q. After you were advised a finder's fee was paid did you register any objection to Mr. Baker? A. No, sir.

Q. Did you have any objections A. No, sir.

Mr. Williams: I have no further questions.

Redirect Examination

By Mr. Mittler:

Q. Mr. Bostick, when you found out did you ask Mr. Baker whether or not he received a commission. A. I don't think I ever directly asked Mr. Baker if he had received a commission. I don't know where—I know I read it in the paper that the allegation was that. I was in California when the suit was filed so I did not read the Capital Vending suit. I have no recollection as to whether I found out about this finder's fee. If I asked Mr. Baker I have forgotten.

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488 Thereupon,

William A. Ritenuor

was called as a witness on behalf of the Government, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hansen:

Q. Mr. Ritenuor, you spell your name, R-i-t-e-n-u-o-r?

A. That is right.

Q. What is your full name? A. William A. Ritenuor.

Q. Where do you live? A. 2450—39th Street, Northwest, Washington, D. C.

Q. What is your occupation? A. I am an Internal Revenue Agent.

Q. How long have you been an Internal Revenue Agent? A. Thirteen years.

Q. Do you know the defendant, Robert G. Baker? A. I know who Mr. Baker is and can identify him. I do not know him personally.

Q. All right.

I show you Government's Exhibit in identification 2, which is the 1962 Income Tax Return of Robert G. 489 Baker, and Dorothy C. Baker, and ask you if you can identify that Return? A. Yes, sir, this is the Return I prepared and bears my signature.

Q. At whose request did you prepare the Return? A. Mr. Baker's secretary.

Q. What was her name? A. Miss Carol Tyler.

Q. Where did you prepare the Return? A. In the Old Senate Office Building, in Washington, D. C.

Q. Will you state what you did in connection with preparation of the Return, please? A. She gave to me the—

Q. You mean Miss Tyler? A. Miss Tyler gave to me the figures of income and deductions and a copy of a partnership return. From these I prepared complete re-

turns in pencil. Miss Tyler waited at this time until I had completed them.

Later in the afternoon, same afternoon, she brought back the typed copy which I compared and signed.

Q. Where did you sign it? A. In the Old Senate Office Building, in Washington.

Q. Does Government's Exhibit 2 bear your signature as the preparer of this return? A. It does.

Q. Did you have any conversation with Mr. Baker in connection with the preparation of that 1962 Return?

A. A man who identified himself as Mr. Baker called with respect to the treatment of the investment credit which on the partnership return had been taken as a deduction rather than allowed as a credit against tax to the individual partner. He questioned me about it and asked if the way I handled it was correct.

And later in the day called and said that he wished to thank me, that he had found that this was the way to handle it.

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492 Thereupon,

Milton L. Hauft

was called as a witness on behalf of the Government, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hansen:

Q. Mr. Hauft, you spell your name, H-a-u-f-t? A. That is right.

Q. What is your full name? A. Milton L. Hauft.

Q. Where do you live? A. 3108 Archer Place, Kensington, Maryland.

Q. What is your business or occupation? A. I am a Management Analyst with the Department of Labor.

Q. How long have you been with the Department of Labor? A. Since 1962.

Q. Where were you before that? A. I was at the 493 Post Office Department.

Q. How long were you at the Post Office Department? A. 1959 up until the time I left for the Department of Labor in '62.

Q. Where did you work before you went to the Post Office Department? A. Internal Revenue Service.

Q. During what years did you work for Internal Revenue Service? A. '49 through '50.

Q. What was your position with Internal Revenue Service? A. Revenue Officer.

Q. Do you know the defendant, Robert Baker? A. I do, sir.

Q. You recognize him here in the Court Room? A. Yes, sir.

Q. Have you ever had occasion to prepare an Income Tax Return for Mr. Baker? A. I did.

Q. I hand you Government's Exhibit 1, in evidence, which is the 1961 Income Tax Return of Robert G. and Dorothy C. Baker, and ask you if you prepared that Return? A. I prepared a draft of this Return, sir.

494 Q. Well. All right.

Now, where did you prepare it? A. In Mr. Baker's office.

Q. All right.

Was your draft subsequently typed up then? A. Yes, sir.

Q. Where did you get the information? A. From Mr. Baker.

Q. And was the draft that you prepared substantially the same as the Return that you have before you, Government's Exhibit 1, as far as— A. To the best of my knowledge, yes, sir.

Q. Now, where did you get the information? A. From Mr. Baker.

Q. I mean where were you located when you got it? A. In his office in the Capital Building.

Q. Was that Return prepared in the Capital Building then? A. Yes.

Q. In Washington, D. C.? A. In Washington, D. C.

Q. I want to direct your attention to Schedule C in Government's Exhibit 1. Will you just tell the
495 Court and jury what Schedule C is, please? A. Schedule C is the profit or loss from self-employment or business income or profit.

Q. What is the principal business shown on the Schedule C? A. Attorney.

Q. And the business name? A. Tucker and Baker.

Q. And the business location? A. 2000 P Street, Northwest, Washington, D. C.

Q. What is the gross shown on that Schedule C? A. \$8,253.90.

Q. Did you get that figure from Mr. Baker? A. Yes, sir. Mr. Baker gave me this figure representing income from the practice.

Q. In what form did he give you the information? A. Orally.

Q. Was it a lump sum figure or did he break it down for you? A. To the best of my recollection it was in a lump sum figure indicating his receipts from his practice.

Q. He did not give you a breakdown of the source, or sources? A. No.

496 Q. Directing your attention to the Schedule C of business deduction, what is the total amount of the deductions shown there? A. The total deductions amount to \$8,497.15.

Q. Did you subtract that figure from the gross receipts shown on Schedule C? A. Yes.

Q. What was the resulting figure? A. Net loss of \$243.25.

Q. In connection with the Schedule C, Business deductions, is there a separate schedule there that itemizes or

lists those deductions? A. Yes, Schedule C-2 is made part of the Return.

Q. How were the deductions given to you that were shown on Schedule C-2? A. For the most part Mr. Baker had receipts and checks which we used to support these deductions.

Q. Do you see on Schedule C-2 a deduction for rent? A. Yes, sir.

Q. In what amount? A. \$1,200.00.

Q. How did you get that information? A. This
497 item, if I recall again, Mr. Baker gave me that figure.

Q. How did he give it to you? A. Orally.

Q. Orally.

Now, I direct your attention to a Schedule 1, Interest on Notes.

Do you find that? A. Yes, sir.

Q. Do you see there a deduction for interest paid to Luther Hodges? A. Yes, sir.

Q. In what amount is that? A. \$913.12.

Q. How did you get that figure? A. Most of these figures were supported by statements from Mr. Baker. I would presume Mr. Baker either had supporting documentation or gave me that figure orally.

Q. I show you Government's Exhibit 2, in evidence, which is a 1962 Income Tax Return of Robert G. and Dorothy C. Baker. I will ask you if you did any work in connection with the preparation of that Return? A. I did prepare a draft copy of a '62 Return for Mr. Baker.

498 Q. Where did you do that? A. Again, in his office in the Senate Building.

Q. Who was present? A. Mr. Baker and Miss Tyler was there. Mr. Baker in the inner office and Miss Tyler in the outer office, in most cases.

Q. Tell us what occurred or what you did in connection with the preparation of it? A. Well, I sat with Mr. Baker developing the—with his GSW 2's to support the income initially, and then worked out the Schedule C income based

on figures, some supported by documentation; others orally from Mr. Baker. Went through his receipts and evidence of payment to support the deductions.

Q. All right.

What resulted then from the work that you did at that time? A. I presented—I gave Mr. Baker the draft copy of what was then the completed Return.

Q. What happened to that then, if you know? A. Well, as I later understood, that I had made an error in the preparation of the Return in notating a deduction for investment credit, and that Mr. Ritenour had done it over again.

Q. I direct your attention to Schedule C of the 1962 Return, Exhibit 2, and did you prepare that schedule? A. I prepared a Schedule C, yes, sir.

Q. Is it the same as that schedule there that you see before you, that Schedule C? A. To the best of my knowledge, yes.

Q. Where did you get the information for the preparation of that Schedule C? A. From Mr. Baker again, and this represented income from his law practice. Also income that he himself had earned in commissions, part of it being from commissions from meats, part of it being from Mr. Hill in commissions paid, and other part of it being the law practice.

And once we completed the Return, if I recall, this amounted to some \$16,000. Mr. Baker later informed me to increase this figure by \$40,000.

Q. Did you do so? A. I did so.

Q. So that the total gross receipts shown on Schedule C are how much? A. \$56,411.90.

Q. Did Mr. Baker tell you the source or sources of the \$40,000? A. No, sir.

Q. Did you have any further conversation with Mr. Baker concerning that \$40,000 additional amount? A. I did not, sir.

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521 Whereupon

Dorsey Paul Etzler

was called as a witness by the Government, and having been duly sworn, was examined and testified as follows:

Direct examination

By Mr. Hansen:

Q. Will you state your full name, please? A. Dorsey Paul Etzler. D-o-r-s-e-y, E-t-z-l-e-r.

Q. Where do you live, Mr. Etzler? A. Baltimore, Maryland.

Q. What is your business or occupation? A. Vice President and Loan Officer, Fraternity Federal Savings and Loan Association.

Q. Do you have custody and supervision of records of the bank—the association? A. Yes.

Q. I hand you what has been marked for identification as Government Exhibit 120A and ask you if you will identify it, please. A. (Examining.)

Yes. This is the Association records.

522 Q. Will you state what it is, please. A. It is a letter dated February 1, 1963, from Mr. Ernest C. Tucker to Mr. William C. Rogers, Esquire.

(Government's Exhibit No. 120A for identification—Letter of February 1, 1963 from Mr. Tucker to Mr. Rogers.)

Q. Who is Mr. William C. Rogers, Esquire? A. He is an attorney for the Association.

Q. I see.

Now I hand you Government exhibit for identification 120—

The Court: Have you seen these, Mr. Williams? Will you show them to Mr. Williams, please.

(Defense counsel examines.)

Mr. Williams: I have taken a hurried look at them, Your Honor, and I don't want to delay the proceedings.

By Mr. Hansen:

Q. Mr. Etzler, I hand you Government Exhibit 120B for identification, and ask you if you will state what it is, please. A. It is the application received by the Association for the third loan on the Carousel.

Q. Whose application is it? A. This is the Association's.

523 Q. Who submitted it? Who signed it? What signature does it purport to bear? A. It is signed by Ernest C. Tucker, Serv-U Corporation, and by Robert G. Baker and Dorothy C. Baker.

(Government's Exhibit No. 120B for identification, application for loan on the Carousel.)

Q. Now I hand you Government Exhibit 120 for identification and ask if you will identify it, please. A. It is a copy of a financial statement of Robert G. Baker, dated February the 1st, 1963.

Q. Is it a copy or is it an original, Mr. Etzler? A. This is a—it is the financial statement submitted to the Association, but it appears to be a copy of an original.

Q. All right, sir.

(Government's Exhibit No. 120 for identification, financial statement of Robert G. Baker, Feb. 1, 1963.)

Was Government Exhibit 120 filed in connection with Government Exhibit 120B? A. Yes, sir, it was.

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604 Whereupon—

Eugene Ray Foster

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Mittler:

Q. Would you state your full name, sir? A. Eugene Ray Foster.

Q. What is your address, sir? A. My address? Beckley National Bank, Beckley, West Virginia.

Q. What is your title with the bank? A. Assistant Vice President.

Q. How long have you been with the bank, sir? A. Approximately thirteen years.

Q. Do you have custody and supervision of the records of the bank? A. Yes, sir.

Q. I show you what has been marked Government 117 and ask you if you can identify that, sir?

(Whereupon financial statement of Robert G. Baker dated the 16th of July, 1962 was marked Government Exhibit 117, for identification.)

605 The Witness: Yes, sir.

Q. Would you tell us what it is, please? A. Financial statement of Robert G. Baker dated the 16th of July, 1962.

Q. I show you, sir, what has been marked Government Exhibit 118. Can you identify that?

(Whereupon letter dated February 11, 1963 to president of Beckley National Bank from Robert G. Baker and financial statement dated February 1, 1963 on Robert G. Baker were marked Government Exhibit No. 118.)

The Witness: Yes, sir.

By Mr. Mittler:

Q. Would you tell us what that is, sir? A. It is a letter dated February 11th, 1963 to Mr. Elmer L. Davis, President, the Beckley National Bank, from Robert G. Baker, and a financial statement dated February 1, 1963 on Robert G. Baker.

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606 Mr. Mittler: Your Honor, at this juncture, with the Court's permission, we would like to read into the record a stipulation which the Government has entered into with counsel for the Defendant.

The Court: Mr. Williams, are you acquainted with the terms of the stipulation?

Mr. Williams: Yes, sir.

The Court: You agree to it?

Mr. Williams: Yes, sir.

The Court: You may proceed.

Mr. Mittler: Thank you, Your Honor.

It is hereby stipulated by and between the Government and counsel for the Defendant that no rent was paid by or on behalf of Robert G. Baker during the year 1961 for a law office which he maintained in Easley, South Carolina.

Thank you, Your Honor.

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615 Whereupon—

Gertrude C. Taylor

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hansen:

Q. Mrs. Taylor, will you state your full name, please?
A. Gertrude C. Taylor.

Q. And where do you live, Mrs. Taylor? A. 5502 Montgomery Street, Chevy Chase, Maryland.

Q. What is your business or occupation, Mrs. Taylor?
A. I work for the United States Senate, Senate Small Business Committee.

Q. And how long have you worked for that committee, Mrs. Taylor? A. Sixteen years, approximately.

Q. Mrs. Taylor, were you formerly married to
616 Alfred Novak? A. Yes, I was.

Q. And is he living now? A. No, he is not living.

Q. When did he pass away, Mrs. Taylor? A. March 3, 1962.

Q. Now, do you know the Defendant Robert G. Baker?
A. Yes, I do.

Q. Do you see him here in the courtroom? A. Yes, I do. Sitting at the far end of the table by Mr. Williams (indicating).

Q. Thank you. How long have you known Mr. Baker, Mrs. Taylor? About how long? A. Since about 1955, early in the year.

Q. Now, directing your attention to 1962, Mrs. Taylor, did you have any business relationship with Mr. Baker during that year? A. Prior to 1962?

Q. No, during 1962. A. Oh, during 1962. Yes, sir.

Q. What was the nature of the business relationship, please? A. The Carousel Motel at Ocean City, Maryland.

617 Q. Will you tell us what The Carousel Motel was?

A. It is a resort motel in Ocean City.

Q. All right. Was this a partnership in the motel or what form of organization was it that you had in '62?
A. A partnership.

Q. A partnership. Who were the members of the partnership, please? A. My husband, Alfred Novak, my brother-in-law, Donald J. Novak, and Mr. Robert G. Baker.

Q. And Robert G. Baker? A. Yes.

Q. After you husband, Mr. Novak, passed away, who succeeded to his interest then? A. I did.

Q. And after that what were the respective interests of the parties in the motel? A. Mr. Baker's interest was one-

half and my brother-in-law's was one-fourth and so was mine.

Q. When was the Carousel Motel constructed, Mrs. Taylor? A. In 1962.

Q. Do you remember when it opened for business? A. In June or July, formally in July of 1962.

618 Q. Thank you. Now, was a bank account or bank accounts maintained for the Carousel Motel during 1962 and 1963? A. Yes, there was.

Q. Would you tell us what account or accounts there were, please? A. They were operating Carousel accounts here in Silver Spring, Maryland, as well as in Ocean City, Maryland.

Q. And what were the banks, please? A. In Ocean City, it was the Calvin Taylor Bank and in Silver Spring the American National Bank, I think, but I am not sure of the name.

Q. Mrs. Taylor, do you remember the amount of investment you had in the Carousel Motel in 1962? A. Yes. Approximately \$63,000.

Q. Now, subsequent to the opening of the Carousel Motel in the summer of 1962, Mrs. Taylor, was it necessary from time to time to invest additional funds in the motel? A. Yes, it was.

Q. For what purposes in general? A. To meet mortgage payments and general operating funds.

Q. If you know, did Mr. Baker invest additional
619 funds in the Carousel Motel after it opened in the summer of 1962? A. Yes, he made additional funds.

Q. Did he turn over any of those funds to you for investment? A. Yes, he did.

Q. And in what form did he give you those funds? A. In currency and in check.

Q. And what did you do with the funds that Mr. Baker turned over to you? A. I deposited them to the Carousel operating and construction accounts.

Q. In what bank? A. The bank in Silver Spring.

Q. American National Bank? A. American National, I think is the name.

Q. Now, Mrs. Taylor, did the Carousel Motel operate at a profit during 1962 after it opened? A. No, it did not.

Q. Did it operate at a profit any month during 1962 after it opened? A. Not to my knowledge.

Q. Now, directing your attention to the latter part
620 1962, did you have any conversation or conversations with Mr. Baker concerning the financial condition of the Carousel Motel? A. Yes, I did.

Q. And about when was that, Mrs. Taylor? A. Well, I would say almost every month or weeks.

Q. Beginning about when? A. September or October and on.

Q. Thank you. What was the conversation that you had? A. The concern was to get more into the Carousel either by getting more people in the partnership or selling it or someone having come up with some more money.

Q. Someone had to come up with more money? A. That is right.

Q. And what did Mr. Baker say about that, if anything? A. Well, he always said, not to worry, that he would come up with money. He didn't say what kind but that we would make out.

Q. Was anyone else present at those conversations? A. No.

Q. Where were they held usually? A. They were held on the telephone, in his office or at his home and possibly my home, I am not sure.

621 Q. What office? A. This was Mr. Baker's office in the United States Capitol.

Q. And about how many conversations would you say you had with Mr. Baker on that subject and about over how long a period of time beginning, as you said, in September or October of 1962? A. I wouldn't want to venture and say. There were many.

Q. Thank you.

Mrs. Taylor, I hand you what has been identified as a deposit ticket with the American National Bank of Silver Spring, Government Exhibit 108, and I ask you if that deposit ticket is in your handwriting? A. Yes, sir, it is.

Q. Did you make the deposit? A. Yes, I did.

Q. And on about what date did you make the deposit?
A. As the date says here, November 1, 1962.

Q. Where did you get the money for the deposit,
622 Mrs. Taylor? A. I got it from Mr. Baker.

Q. And about when? A. On that day, I would say.

Q. And do you remember where you got it? A. No, I don't think I could say for sure.

Q. Do you remember whether you had a conversation with Mr. Baker concerning that money before you got it?
A. Yes.

Q. What was the conversation that you had? A. Well, that we needed more money to make our mortgage payments or whatever payments were due.

Q. Was that for the Carousel? A. Yes, for the Carousel Motel.

Q. Now, in what form was the money that Mr. Baker gave you, Mrs. Taylor? A. In currency.

Q. And how much currency? A. Five thousand dollars.

Q. Do you remember the denominations of the currency, Mrs. Taylor? A. For the most part, I think it was in one-hundred-dollar bills.

Q. Mrs. Taylor, I hand you what has been identified as a deposit ticket of the American National
623 Bank of Silver Spring, Government Exhibit 109, and I ask you if that is in your handwriting? A. Yes, it is.

Q. Did you make that deposit? A. Yes, I did.

Q. And about when did you make it? A. On November 2, 1962.

Q. Where did you get the money for the deposit, Mrs. Taylor? A. From Mr. Baker.

Q. And about when did you get the money from Mr. Baker? A. I am sure I must have gotten it the same day, November 2.

Q. Do you remember where you got it from Mr. Baker?

A. No. It would be either at his home or at the office. I am not sure.

Q. At Mr. Baker's office? A. In Mr. Baker's office.

Q. Did you have a conversation with Mr. Baker concerning that money prior to the time you received it from him? A. Oh, yes, I did.

Q. What was that conversation as best you recall?

624 A. Well, needing more money for making payments, either mortgage or some other source.

Q. You told him that? A. Oh, yes, I did.

Q. I see. And was that true of the first \$5,000 also, you told Mr. Baker— A. That is right, yes.

Q. —that you needed money? A. Yes.

Q. Now, in what form was the money that Mr. Baker gave you, Mrs. Taylor? A. In currency.

Q. And how much? A. Two thousand dollars.

Q. And what were the denominations of the currency? A. The best I can remember, again it was in one-hundred-dollar bills.

Q. Mrs. Taylor, I now hand you two exhibits, Exhibit 110, which has been identified as a deposit ticket with the American National Bank of Silver Spring, and Government Exhibit 111, which also has been identified as a deposit ticket with the American National Bank of Silver Spring, and I ask you if your handwriting appears

625 on those two documents? A. Yes, it does, sir.

Q. And did you make the deposits reflected by those two exhibits? A. Yes, I did.

Q. And about when did you make those two deposits?

A. To the best of my knowledge, the same day as I reported here, November 9, 1962.

Q. Where did you get the money for those two deposits, Mrs. Taylor? A. I received it from Mr. Baker.

Q. Did you have a conversation with Mr. Baker prior to the time that you received that money? A. Yes, I did.

Q. And about when was that? A. The previous day and sooner—maybe two or three days but at least a day before.

Q. All right. Do you remember where this conversation took place? A. Where?

Q. Yes. Most likely on the telephone.

Q. Telephone. Thank you. What was the conversation, Mrs. Taylor? A. Mortgage payment to made
626 of some sort.

Q. And what did Mr. Baker say, if anything? A. That he would have the money for me. However, he was going out of town and that I was to contact Mrs. Baker, which I did.

Q. All right. Does Mrs. Baker work at the Capitol? A. She worked at the Capitol then, United States Senate then, yes.

Q. In 1962? A. In 1962.

Q. And in what capacity did she work, if you know? A. Her title, Records Manager, if I recall correctly, for the Internal Security Subcommittee of the Judiciary Committee.

Q. What did you do then, Mrs. Taylor, to get that money in your possession? A. Well, as a result of the telephone conversation to Mrs. Baker, when I received the money, I deposited it to two different accounts.

Q. How did you get the money from Mrs. Baker, though? A. When she told me she had the money, I had our messenger, who was walking by the office, to pick up
627 what I thought was going to be a check.

Q. And at her office in the Senate? A. In the United States Senate, yes, sir.

Q. The messenger was sent from your office in the Senate? A. Yes.

Q. Now, in what form was the money that you received from Mrs. Baker on that occasion, Mrs. Taylor? A. It was in currency.

Q. And how much money was there? A. Twelve thousand dollars.

Q. What were the denominations of the currency? A. Most of them were in one-hundred-dollar bills that I remember.

Q. Were those deposits as represented by Government Exhibits 111 and 110 made to different accounts? A. Yes, they were.

Q. Would you explain which accounts they were made to? A. A deposit of \$9,500 was made to the Carousel Operating Account; and \$2,500 was deposited to the construction account.

Q. Mrs. Taylor, I now hand you two documents which have been identified as Government Exhibits 112 and 628 115, and they have been identified as deposit tickets with the American National Bank of Silver Spring.

I ask you if those two exhibits, 112 and 115, are in your handwriting? A. Yes, they are.

Q. And did you make the deposits? A. Yes, I did.

Q. Where did you get the money for the deposits? A. I got it from Mr. Baker.

Q. About when? A. On November 19, 1962.

Q. What is the amount of money shown on the deposit on Government Exhibit 115? A. \$13,300.

Q. And in what form was that money? A. That was in currency.

Q. To what account was that deposit made, Mrs. Taylor? A. That was made to the Alfred S. Novak Builder account. That was money in part loaned from Mr. Baker to us to make payment for another Ocean City block that we owned jointly.

Q. You owned it jointly with Mr. Baker? A. Yes.

629 Q. And what was done with the money after it went into the account? A. I wrote a check, I recall, the same day to a Mrs. Freed, who owned the lot, the second lot, the second block of land that we owned in Ocean City.

Q. Is that Mrs. F-r-e-e-d? A. F-r-e-e-d, in Reading, Pennsylvania, yes.

Q. Now, was that account covered by Government Exhibit 115 an account of your husband's? A. Yes, it was.

Q. What is the amount of the deposit reflected on Government Exhibit 112? A. Five thousand dollars.

Q. In what form was that money? A. That was also in currency.

Q. And to what account was that deposit made? A. That was made to the Carousel account.

Q. Now, how much do those two deposits add up to, Mrs. Taylor? A. \$18,300.

Q. And where did you receive that money? A. I received it from Mr. Baker.

630 Q. Where? A. At his office in the United States Capitol.

Q. And about when? A. That same day, November 19, 1962.

Q. Was anyone else present? A. Yes.

Q. Who was that? A. Carol Tyler, Mr. Baker's secretary, I think.

Q. Will you tell us to your best recollection what occurred on the occasion when you obtained that \$18,300 in currency? A. When I went to Mr. Baker's office to pick up the money, not knowing, of course, which form it was in, he was in his office, and I was asked to come in, and his secretary was there also.

He was on his way either to the Senate Floor or some appointment and said that he would like for Miss Tyler and myself to count out the money. Apparently there was some miscounting. And so she and I proceeded to recount the money.

Q. Where was the money when you counted it? A. The money was on Mr. Baker's desk.

Q. And how was it arranged on Mr. Baker's desk? A. In piles on his desk.

631 Q. And what were the denominations of the currency? A. One-hundred-dollar bills for the most part, that I remember.

Q. And after you had counted \$18,300—is that what you counted? A. Yes.

Q. Was there any money left over? A. Yes, there was.

Q. Also in currency? A. Yes.

Q. What was done with that, if you know? A. I saw Miss Tyler put the balance of the money in a filing drawer in her office.

Q. Did Mr. Baker give you any instructions as to how to deposit that money? A. Yes.

Q. What instructions did he give you? A. He knew we needed the payment for that Ocean City block, which amounted to around \$13,000-something, and he told me to deposit \$13,300 to the Alfred S. Novak account, which later was repaid to him by a sale of stock, and the \$5,000 I was to deposit to the Carousel account to meet other obligations.

632 Q. Mrs. Taylor, I now hand you Government Exhibit 114, which has been identified as a deposit ticket with the American National Bank of Silver Spring, and I ask you if that is in your handwriting? A. Yes, it is.

Q. Did you make that deposit? A. Yes, I did.

Q. About when? A. This was made on January 15, 1963.

Q. Where did you get the money for that deposit, Mrs. Taylor? A. I got it from Mr. Baker in his office in the United States Capitol.

Q. And about when? A. On January 15, 1963.

Q. And did you have a conversation with Mr. Baker at or about the time you received that money? A. Yes, I did.

Q. Do you remember what the conversation was? A. Well, there were mortgage payments to be made and money to be deposited to the account and he said he would give me the money.

633-650 Q. And that deposit was for the Carousel? A. Yes, it was.

Q. Were all the deposits you have testified to for the Carousel? A. Yes, except for the \$13,300.

Q. Yes, yes. In what form was the money given to you by Mr. Baker? A. In currency?

Q. And how much money?

The Court: Mr. Hansen, would you suspend briefly to shift reporters?

Mr. Hansen: Yes, sir.

651 The Court: We will take a brief pause to change reporters.

(Brief pause.)

By Mr. Hansen:

Q. In what form was the money that you received from Mr. Baker? A. In currency.

Q. How much money was it? A. \$3,000.00.

Q. What were the denominations? A. One hundred dollar bills.

Q. Do you know where Mr. Baker obtained the money that he gave you for these several deposits? A. No, I do not.

Q. Did you ever have a conversation with Mr. Baker as to the source of that money, the currency? A. No, I have not.

Mr. Hansen: No further questions.

Mr. Williams: May I have the exhibits? Is that all of them?

Cross Examination

By Mr. Williams:

Q. Miss Taylor, when was it that you and your late husband and Mr. and Mrs. Baker first conceived the
652 idea of The Carousel Motel? A. It could have been in 1959. No, 1960. I'll take that back.

Q. Were you down at Ocean City at the time? A. After we purchased the one block of land where the Carousel is now built is when we decided to build a motel instead of homes. We didn't know what we were going to do.

Q. You originally thought of building homes down on the ocean, did you? A. We were not sure.

Q. And you acquired this land in 1960, or '59? A. '59 or '60. I don't want to—

Q. How much land was there that you acquired, Mrs. Taylor? A. One block of land.

Q. When you say a block—? A. Footage I am not sure. It may be like 300 feet on the ocean or thereabouts and 500 feet deep running from the ocean to the highway.

Q. When you say it was a block, do you mean approximately the length of a city block as we know it here in Washington, D. C.? A. Yes.

653 Q. From whom did you purchase the land? A. The block of land I seem to recall was owned by Mr. George Cropper or Bert Cropper as they want to call him in Ocean City.

Q. Is that the man who ultimately did much of the building of the Carousel Motel? A. Yes, sir.

Q. And how much did you originally pay for the land, Mrs. Taylor? A. \$57,000.00.

Q. And how was that paid for? A. Well, there was a deposit made on the land and and then—at the time of the settlement—. After that there probably was one payment or it was made in one or two payments, I am not sure. I don't recall.

Q. How much was it that was actually paid down on the land, Mrs. Taylor? A. The original down payment?

Q. Yes. A. I would not want to say now. I am not sure.

Q. All right. How was ownership taken in this land in the first instance? Was it a fifty-fifty arrangement with the Novacs having half and the Bakers having half? A. No. That was in one third interest. Mr. Baker had one third interest and my brother-in-law Donald Novac
654 had one third interest and then we had one third interest.

Q. Mr. Donald Novac was a builder, was he not? A. He was in the building business with my husband.

Q. When was it that construction began on what is now known as the Carousel Motel? A. The construction of the Carousel started approximately in November, 1961.

Q. What was the estimate at that time as to the completion date? A. It was our hope to have it built by Decoration Day or that Memorial Day week-end or thereabouts.

Q. While it was under construction, it was damaged by the tidal wave that did so much damage along the Eastern Shore on March 6, 7, and 8, was it not? A. Yes, it was.

Q. That did a tremendous amount of damage to the motel? A. Yes, it did.

Q. In fact, your estimate on the damage was up to \$100,000, wasn't it, Mrs. Novac? A. I don't know what the estimate was in the exact amount.

Q. Well, you remember that on one occasion when you were interviewed by agents from the Federal Bureau of Investigation you told the agents that you felt the damage that was done down there by this storm, to the Carousel property, was \$100,000? A. Well, I do know that it exceeded more than probably—I just don't remember. I know it was quite a sum of money but I can't say.

Q. Let me approach it with you this way, Mrs. Taylor. It exceeded the damage to the Carousel Motel—exceeded what you were able to get by way of a disaster loan from the Small Business Association to put it back in status quo, did it not? A. That I would say, yes.

Q. And there was damage done, was there not, Mrs. Novac, to the beach front by erosion of the beach so that you lost some of your sand and land, did you not? A. Yes.

Q. And you were not able to get any loan predicated on the damage to the real estate as distinguished from the damage to the building, isn't that so? A. I understand that is right.

Q. Now the damage that was done in March of 1962 by the storm set back the construction progress by many weeks, did it not? A. Yes, it did, sir.

Q. And it also raised the construction costs, did it
656 not? A. Yes.

Q. And in fact, Mrs. Novac, the construction costs were already exceeding what the estimates had been on the cost of the motel, isn't that so? A. Yes, due to the fact that there were changes made in the original plan of the motel.

Q. Now, in 1962, it was necessary to pour more money into this project than had been anticipated by the co-venturers or the partners. If you will, is that not a fact? A. That is right.

Q. It was necessary to put money up in the operating account and in the construction account, isn't that so? A. Yes.

Q. Now, did you know, Mrs. Novac, that during 1962, Mr. Baker, who was one of your partners in this venture, made personal loans from an Oklahoma bank for the purpose of putting money into this project? A. I was aware of that only once when he gave me a check written on the bank in Oklahoma.

Q. Written on a bank in Oklahoma? A. Yes.

Q. Did you ever have any conversations with him about a \$250,000 loan that he had made from an Oklahoma bank through the offices of Senator Kerr? A.
657 No.

Q. You did not. You didn't have any discussion vis-a-vis this loan? A. Not to my knowledge.

Q. In any event, in November of 1962, there came a time when he gave you money to put into the Carousel account, is that correct? A. That is right.

Q. And was the first date, and when I say money, in this instance, Mrs. Taylor, I am talking about currency as you use the term. A. Yes.

Q. Was the first date on which you received any cash from him for this purpose on November first?

Q. Of 1962? A. To my knowledge, yes.

Q. I think Mr. Hansen showed you Government Exhibit
108 and asked you if you had deposited \$5,000 to the

Carousel account, the operating account at the American National Bank at Silver Spring on November first? A. That is right.

Q. Was that money you had received from Mr. Baker?

A. Yes.

659 Q. And was that money obtained at a time when the account at the American National Bank was near depletion? A. Yes.

Q. What bills were being paid, Mrs. Novac, out of the operating account, as distinguished from the construction account? A. The mortgage payments were made out of that.

Q. To whom were the mortgage payments being made? A. Well, one of them would be the Fraternity Federal in Baltimore. The very bank there, the American National Bank note, there were others.

Q. In other words, you had a number of indebtednesses on this project, which payments were constantly coming due, isn't that so? A. Yes.

Q. Both to builders and to banks? A. Yes.

Q. I believe it was on November 2 that you said you came again to Mr. Baker for still another replenishment of the operating account; is that correct? A. That is right.

Q. And at that time you received from him \$2,000? A. Yes.

660 Q. That was the very next day, wasn't it? A. The very next day but why I don't understand.

Q. Well, was it because it had been necessary to make a payment of the \$5,000 to one of your creditors immediately upon its deposit? A. I wish I could refresh my memory, but that far back, no.

Q. In any event, there came a time once again in that month when you, on, I believe, November 12, deposited \$12,000 to the same American National Bank account; is that correct? A. That is right.

Q. Now that deposit, Mrs. Taylor, was made in split fashion, was it not? A. Yes.

Q. Part going to one account and part to another, is that so? A. That is right.

Q. One deposit went into Account 155-760 and the other into 790-016. What was the difference between those two accounts? A. One was the operating account for the Carousel and the other was the original construction account.

Q. So that as of this time, you had received from Mr. Baker approximately \$19,000 for these American
661 National Carousel accounts, is that correct? A. That is right.

Q. Now on November 19, there came a time when you needed money to pay on a mortgage, is that so? A. That is right.

Q. What was that mortgage, Mrs. Novac? A. That was another payment on another block of land that we owned jointly in Ocean City.

Q. Was that contiguous or next to the land on which the Carousel was being constructed? A. No.

Q. Who owned the other piece of land? A. The other, this other block of land in Ocean City was owned by Mr. Baker, my brother-in-law and—

Q. Same co-venture? A. Same set up.

Q. The mortgage was becoming due on that? A. Yes.

Q. That was payable to somebody named Fred? A. Yes.

Q. That was in the amount of \$13,500? A. Not exactly, it was \$13-some odd dollars.

Q. It was between two and three? A. Close to 13.
662 It could have been 12, I am not sure.

Q. On that occasion you received \$13,300, did you not, for the purpose of paying that mortgage? A. Yes, sir.

Q. At this time the Carousel Motel was now open? A. Yes.

Q. And it was operating not at a profit, is that correct? A. No.

Q. When you say no, you are agreeing that it was operating at a loss, is that correct? A. Yes, sir.

Q. It was not operating at a profit? A. No.

Q. And so that on this occasion you deposited this money to your brother-in-law's account in the American National Bank, did you not? A. No. My husband's account, which I was using to finish our building business and other business that I had outside of the Carousel Motel.

Q. So when it went into the Alfred S. Novac, Builder account, that was your husband, your late husband? A. My husband.

663 Q. Your husband at this time was deceased? A. Yes.

Q. But you still maintained the account in his name? A. Yes, I did.

Q. Because you were closing out various accounts that he had, right? A. Various business, or other businesses that he had outside the Carousel.

Q. Now there came a time—in fact, on that very day when you made still another deposit and this time to the Carousel operating account, did you not, Mrs. Taylor? A. Yes.

Q. And that deposit was in the amount of \$5,000? A. To the Carousel account, yes.

Q. And that was to conduct the ordinary operating cost of the Carousel which by this time was open? A. It was an operating account—but out of this account we paid our mortgage payments.

Q. To the various banks which had lent money on the Carousel? A. That is right.

Q. And the last time that you received any monies from Mr. Baker for the Carousel, as I understand your testimony given in response to Mr. Hansen's question, was on 664 January 12—is that the 12th? A. Well, I am not sure if I can read it. I think 15.

Q. Is it 15? And that was in the amount of \$3,000? A. Yes.

Q. It was at that time that Mr. Baker told you that he was at the bottom of the barrel with respect to his ability to contribute to the Carousel, was it not? A. That he was scraping the barrel.

Q. He was scraping the bottom of the barrel, was that right? A. That is right.

Q. That was the last time that he gave you money for purposes of putting it into this operating account or into the Alfred Novac, Builder account; is that right? A. That is right.

Mr. Williams: Will Your Honor indulge us a moment?

The Court: Surely.

By Mr. Williams:

Q. One thing I think I didn't ask you, Mrs. Taylor, when Mr. Baker was putting this money into the Carousel during 1962, this money was being expended for all of the partners, was it not? It was being expended on the Carousel itself as distinguished from Baker? A. Yes, that was spent on the Carousel. He was putting the money in.

665 He said we would straighten things out later.

Mr. Williams: I have no further questions.

Redirect Examination

By Mr. Hansen:

Q. Were things straightened out later, Mrs. Taylor? A. Yes, in the form of the sale of the motel.

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671 Thereupon

Kenneth D. Childs

a witness called by counsel for the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your name. A. Kenneth D. Childs.

Q. Would you spell your last name? A. C-h-i-l-d-s.

Q. Where do you reside, Mr. Childs? A. Los Angeles, California.

Q. What is your present business or occupation? A. I am a savings and loan executive.

672 Q. Mr. Childs, was there a time when you were associated with Home Savings and Loan Association? A. Yes.

Q. In what capacity? A. I was the president.

Q. Where is Home Savings and Loan Association located, sir? A. The head office is in Los Angeles, California with branches throughout Southern California.

Q. How many branches does Home Savings and Loan have, sir? A. Today I think they have thirty.

Q. To the best of your knowledge what are the approximate assets of Home Savings and Loan? A. Over \$2 billion.

Q. The largest savings and loan in the country? A. Yes.

Q. How long have you been in the savings and loan business, Mr. Childs? A. Since 1949.

Q. Now, Mr. Childs, directing your attention to the fall of 1962, did you have occasion to travel to Washington, D. C.? A. Yes.

673 Q. What was the purpose of your visit to Washington, D. C. during that period of time? A. I had been following the legislation regarding the tax law on savings and loans for the preceding year and a half, and I was interested in finding what was going to be the conclusion of the law. There were probably fifty or one hundred other savings and loans that year at the same time.

Q. To the best of your recollection, Mr. Childs, when you were in Washington during 1962? A. During 1962.

Q. Yes, more specifically, September of 1962? A. Well, in September of 1962, if I remember correctly, it was about September 19 to 25.

Q. Now, during that specific period of time when you were in Washington, D. C., did you have a conversation with Glenn Troop concerning the possibility of meeting Mr. Robert G. Baker? A. Yes.

Q. And to the best of your recollection when did that conversation occur? A. As close as I can place it, I would say September 24 or 25.

Q. Who is Glenn Troop, Mr. Childs? A. Glenn
674 Troop is the vice president of the U. S. Savings and Loan League and represents the League on Capitol Hill.

Q. Very briefly, Mr Childs, what is the primary or principal function of the United States Savings and Loan League? A. Well, the Savings and Loan League is a trade organization that represents the League in all matters concerning the Savings and Loan industry.

Mr. Troop's particular function is the political contacts and knowledge regarding legislation and things of that sort.

Q. To the best of your knowledge, who is the one that mentioned the possibility of meeting Mr. Baker? A. Mr. Troop.

Q. At that time did he place a call to Mr. Baker? A. I don't know.

Q. I see. Well, after your conversation with Mr. Troop, did you have a conversation with Mr. Baker? A. Yes, I did.

Q. To the best of your recollection, when did you have that conversation with Mr. Baker? A. I would guess that it would be in September—either September 24 or 25.

During the last part of the stay that I was in Washington.

675 Q. To the best of your knowledge, had you met Robert G. Baker prior to that time? A. I believe this was the first time that I met Mr. Baker, unless I possibly had seen him casually at some time, when he had made a talk to the savings and loan industry and the Savings and Loan League. This was the only time that I had any personal contact or conversation with him.

Q. Do you see Mr. Baker in the Courtroom, Mr. Childs? A. Yes.

Q. Will you please point him out? A. (Witness complies.)

Q. Thank you.

Now, do you recall where that meeting took place that you had with Mr. Baker? A. I do not know where it took place specifically. I know we went some place in the direction of the Capitol.

Q. Where did you have this conversation with him, in a lounge or the meeting room? A. It was either in a club or a meeting room of some sort in a building near the Capitol.

Q. Who was present during this conversation? A. Mr. Troop, Mr. Baker and myself.

Q. To the best of your recollection, Mr. Childs, how long did this particular conversation take place?
676 A. I would estimate it took ten or fifteen minutes.

Q. Will you please state to the Court and the jury to the best of your recollection what was stated by yourself and Mr. Baker at that time and place? A. Well, Mr. Troop introduced me to Mr. Baker and Mr. Baker made a few pleasantries about my association, its size and its importance in the business.

Q. You are referring to Home Savings? A. The Home Savings and Loan Association. Its size and its importance in the industry and its particular success in connection with the Savings and Loan business, in connection with branches because it was the first that really went out for branches. I cannot, of course, remember the exact words but I have to give you simply the substance. I can't quote it word for word. It is too long ago from this time but I can remember what we generally talked about.

Q. Yes, sir. A. Mr. Baker told me that he felt the savings and loan industry had been very backward and far behind other businesses in recognizing the necessity of becoming politically active. That it was important for a business to get out and work politically, to make friends and to make contacts, so that when legislation came along

that affected that business, there would be an open
677 door and an attentive ear for the businesses to present their viewpoints and their side of the matters that were in effect.

Mr. Baker told me of two instances in which candidates who had publicly stated they were in favor of the oil depletion law had received substantial campaign help the following day, from major oil companies. He mentioned that he was the secretary, I believe it is, of the Majority, that he also was collector of the campaign, a collector of campaign funds for the Senate Campaign Committee.

I recall that he mentioned a number of Senators that he felt were very strongly and very much in need of financial help in their campaigns.

Q. To the best of your recollection, Mr. Childs, what names did Mr. Baker mention to you at that time? A. As I recall, now, the names Mr. Baker mentioned, Senator Hayden, Senator Morton, Senator Dirksen, Senator Bennett, Senator Carlson, Senator Fulbright, Senator Smathers, and Congressman Mills.

Q. Now, to the best of your recollection after he mentioned those 7 Senators and Congressman Wilbur Mills to you, what else was stated, please? A. I told Mr. Baker that I was not in a position of authority, and I could not commit either my association or the industry in California to this kind of action.

I believe Mr. Baker had suggested that it would
678 be very impressive if the California Savings and Loan industry made campaign contributions in the amount of \$100,000 and that would certainly start them along the line that we had been talking about.

I told him that, after being here for a year and a half, and/or serving, that I had come to the same conclusions that it was important for the industry to become politically active and that I would return to California and make such recommendations.

Q. Now, after this conversation, Mr. Childs, you had with Mr. Troop and Mr. Baker, what, if anything, did you do? A. I returned to California.

Q. And when you returned to California, did you have any conversations with other executives in the savings and loan industry in California? A. Yes.

Q. Would you please state for the record the names of the individuals that you had conversations with concerning this meeting that you had with Baker? A. Well, I immediately reported to Howard Ahmanson.

Q. Who is Howard Ahmanson? A. Howard Ahmanson is the Chairman of the Board and the owner of the Home Savings and Loan Association.

Q. And did you have a conversation with Mr. 679 Ahmanson when you arrived back in California concerning the meeting with Baker? A. Yes.

Q. After you had that meeting with Mr. Ahmanson, did you have any other meeting with any other individual? A. Yes.

Q. When was the next meeting that you can recall? A. The following day.

Q. Do you have a recollection of what that date was? A. Yes, the day of the meeting with the other executives was September 27, 1962.

Q. To the best of your recollection, who was present at that meeting and where did it take place, sir? A. The meeting was held at Mr. Ahmanson's home and office, at 401 South Hudson in Los Angeles, California. At the meeting it was Mr. Ahmanson, Mr. Mark Taper.

Q. Who is Mr. Mark Taper? A. Mr. Mark Taper was the chairman of the Board and chief executive officer of the First Charter Financial, which was the owner of the American Savings and Loan Association.

And Mr. Charles Wellman.

Q. To the best of your knowledge, who is Mr. Wellman? A. Mr. Wellman was the president of the First 680 Charter Financial and the American Savings and Loan Association.

Q. Do you recall anyone else being present at that meeting? A. No, I do not recall anyone else being there.

Q. At that particular meeting did you also have a discussion concerning your earlier meeting with Mr. Baker in Washington, D. C.? A. Yes.

Q. After that meeting what, if anything, happened concerning political contributions? A. After the meeting?

Q. Yes, sir.

Mr. Baker was not present at that meeting and therefore it would be hearsay so you can not testify what took place at that meeting. So, what is the next thing that happened to the best of your recollection concerning political contributions? A. Well, the next thing that happened is that Mr. William Ahmanson told me he was going to raise—

Mr. Williams: I object to what Mr. William Ahmanson told him.

The Court: Sustained.

By Mr. Bittman:

Q. Mr. Childs, any conversation at which Mr. Baker was not present you cannot testify to. A. I see.

681 Q. Did you, after the September 27, 1962 meeting, have a conversation with Mr. Ahmanson and Mr. Stuart Davis? A. Not with Mr. Howard Ahmanson and Mr. Stuart Davis but with another Mr. Ahmanson.

Q. Mr. William Ahmanson? A. Yes, that is right.

Q. Who is Mr. William Ahmanson? A. Mr. William Ahmanson is a nephew of Mr. Howard Ahmanson.

Q. Is he also a savings and loan executive? A. Yes, he was the vice president of Home Savings and Loan at that time.

Q. To the best of your recollection when did that meeting take place between yourself, Mr. William Ahmanson and Mr. Stuart Davis—before you answer, who is Mr. Stuart Davis? A. Mr. Stuart Davis was at that time a director of the Great Western Financial Savings and Loan which owns seven other associations in California.

Q. Now, to the best of your recollection, Mr. Childs, what was the date of that meeting if you can recall? A. I cannot recall it. It would be probably, I would guess two weeks after the meeting with Mr. Ahmanson.

Q. Would it be sometime in the middle of October, 682 1962, approximately? A. That would be so.

Q. And you can not testify, Mr. Childs, as to what conversation took place at that meeting but you can testify to what you saw take place at that meeting, what, if anything, did you observe at that meeting? A. Mr. William Ahmanson handed Mr. Davis an envelope.

Q. I see. And do you recall anything else that took place at that time? A. No, the meeting took about two minutes. He simply handed him the envelope, left the office and Mr. Davis left shortly after that.

Q. Mr. Childs, in connection with the California Savings and Loan contribution, did you make any political contribution, yourself? A. I did not make any contribution personally.

Q. To the best of your knowledge, did anyone associated with Home Savings and Loan and yourself receive acknowledgment from any Senator or Congressman Wilbur Mills in connection with any political contribution for the 1962 campaign? A. You will have to phrase your question once more. I don't know whether you confined the question to the Senators that I mentioned or any Senators.

Q. Well, let me confine it to the Senators that you have mentioned and to Congressman Mills, whom you 683 have mentioned in connection with those Senators and Congressman Wilbur Mills to the best of your knowledge, did anyone associated with Home Savings and Loan or yourself ever receive any acknowledgment from those individuals in connection with their receipt of contributions for the 1962 campaign? A. To my knowledge, no one connected with Home received any acknowledgment of any political contributions from any one of the men that I mentioned.

Q. Thank you.

Mr. Bittman: No further questions.

Your witness.

Cross Examination

By Mr. Williams:

Q. Mr. Childs, I believe that you have testified on direct examination in response to one of Mr. Bittman's questions, that you have been in the saving and loan industry since 1949? A. That is true.

Q. And you are now president of a savings and loan association? A. Yes.

Q. In Southern California, are you not? A. Yes, that is correct.

684 Q. Is that the Southern California Savings and Loan Association, is that correct? A. Yes, that is right.

Q. And you have been associated with that institution since January of 1964? A. Yes.

Q. And, prior to that time, you were the president of the Home Savings and Loan Institution, is that correct? A. Yes.

Q. And you had been president of that Savings and Loan Institution for 7 years prior to 1964? A. Either six or seven years.

Q. Before that, you had been the Executive Vice President of the Home Savings and Loan Institution, is that correct? A. Yes, since 1949.

Q. Since 1949? A. Yes.

Q. So that you had been with the Home Savings and Loan Institution for a period of some 13 years as of 1962, is that correct? A. Yes, that is correct. Thirteen or maybe fourteen. But anyway that is correct.

685 Q. And the Home Savings and Loan Association was then and is now the largest savings and loan institution in the whole world, is it not? A. No, I do not believe that is correct. I believe there are, at least shortly

before 1962, there were two building societies in London which were larger. But I am not sure but what Home has caught them now.

Q. Let me rephrase my question then, Mr. Childs. The Home Savings and Loan Association in California was the largest savings and loan association in the United States at that time? A. Yes.

Q. It was. And it had, I believe, approximately \$2 billion in assets, is that correct? A. No, that is not correct. In 1962, I believe the assets were approximately \$1,600,000,000. They are over two billion now.

Q. In 1962 they were a billion? A. Approximately a billion six hundred.

Q. Six hundred million? A. Thereabouts.

Q. Now, they are over two billion, right? A. Yes.

Q. Now, Mr. Childs, in addition to your presidency of the Home Savings and Loan Association, you served on a committee of the United States Savings and Loan League, did you not? A. Yes.

Q. And that was the Committee on Procedures, was it not? A. Yes.

Q. What was the function, Mr. Childs, of the Committee on Procedures? A. The Procedure Committee of the United States Savings and Loan League screens various matters that are going to be considered for legislation for the industry, makes recommendations on these legislation matters to the Board of Directors of the League.

Q. You say it screens matters of a legislative nature? A. Yes.

Q. By that you mean that you interest yourselves as members of the committee in proposed laws that are being enacted which affect the savings and loan industry, is that correct? A. That is partially correct. Not only the proposed laws but laws that we feel are important for the industry. Sometimes we try to instigate them.

Q. Sometimes you attempt to get legislation passed? A. Yes.

687 Q. At the State and Federal level that will be beneficial to savings and loan associations. A. I believe only the Federal level.

Q. Only the Federal level. You had, in fact—and when I say “you,” I refer to the United States Savings and Loan League—a paid Washington representative, did you not, to guide you and advise you in that area? A. We had a number, but Mr. Troop obviously—not obviously—had primarily this province of telling the League. He did not guide just the procedures of the Procedures Committee. This information and guidance came from all of the officers of the League to the Committee.

Q. And there were approximately 5200 savings and loan associations who were members of the League in 1962, is that correct? A. Well, I could state but I believe it is approximately so.

Q. And the great majority of those members, the great majority of those savings and loan associations were mutual companies as distinguished from stock companies, were they not? A. I believe approximately 90 per cent of them are mutual companies.

Q. Would you state to the Court and the jury please, Mr. Childs, in just short form, what the difference is between a mutual and a stock company. A. Well, in 688 a stock company, the ownership of the company is owned by the owners of the stock of the corporation.

In a mutual corporation, a mutual savings and loan, it is a mutually owned and it is owned by the people who have the savings accounts. Theoretically, there does not seem to be—there doesn't seem to be any particular advantage to that fact but there is no one who can take the earnings individually out. It has to be prorated if they are ever given out to all the members of the savings and loan accounts.

Q. And the companies that you mentioned during the examination conducted by Mr. Bittman, namely, your own Home Savings and Loan and First Charter and Great Western were stock companies, were they not? A. Yes.

Q. They were owned by the stockholders, were they not?
A. They were.

Q. And your particular company, the Home Savings and Loan Corpoartion, your company was owned by the Ahman-
son family, was it not? A. That is true.

Q. And it was owned in toto, was it not, by the
689 Ahmanson family? A. The only reason I am hesi-
tating is because there was one individual who had
two shares which I think later the Ahmanson family ac-
quired and it may have been later or prior to that time.
I am not sure.

Q. And Mr. Howard Ahmanson was the principal owner
of the Home Savings and Loan, was he not? A. He was the
chief.

Q. And his nephew, Mr. William Ahmanson whom you
mentioned in your testimony was a subordinate to him?
A. Yes.

Q. At the Home Savings and Loan Association? A. That
is right.

Q. Now, you testified, Mr. Childs, that you were here in
Washington, I believe, during 1961 and 1962 because of
some legislation that had been proposed which affected
your industry? A. It affected not only my industry—yes,
that is right.

Q. It affected specifically the savings and loan institu-
tions of America, did it not? A. Yes.

Q. And that was the Revenue Act that was proposed by
the Kennedy Administration in 1961, was it not? A. Yes, it
was the tax regulation.

690 Q. And that tax statute or regulation, as you put
it, which was proposed in 1961 by the Kennedy Ad-
ministration, had the effect, did it not, of taxing savings
and loan associations in exactly the same way as commer-
cial banks were being taxed? A. Anything but.

Q. Anything but? A. Yes. It was not in any way similar.

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698 Q. . . . What was the effect of the legislation that was proposed in 1961 by the Secretary of the Treasury to the Congress on savings and loan associations' taxes? A. It changed the tax formula upon which savings and loan associations pay taxes.

Q. Now, would you tell the Court and the jury how it changed it, sir? A. Well, it changed it in many ways. It established a highly restricted definition for what constituted a savings and loan. It restricted our activity in the types of loans that we could make, the percentage of our portfolio in each category. It established the fact that our income had to be from certain sources. We were

699 limited in connection with the sale of loans.

I cannot recall just all the examples of the many different facets that were in the law.

It also changed the fact that we were not permitted to build up a specific reserve without taxation but that a certain percentage of our income would be taxable and a certain percentage went to reserves.

Q. Was the effect of the legislation, Mr. Childs, not to raise the tax liability of savings and loan associations? A. The net reserve was to raise taxes subject to certain reserve requirements of the new law.

Q. And the savings and loan industry vigorously opposed the proposal of the Secretary of the Treasury, did it not? A. Yes, they did because they felt they must have the reserves to withstand the losses that experience had taught the industry they were certain to encounter and I might hasten to add, this is being proved out now.

Q. And in 1961, the industry began to—if I may use the expression—lobby against the Kennedy bill, the Revenue Act of 1962? A. Lobby or howl, or whatever you want to call it. We certainly objected to it.

Q. Lobby or howl. Now, you were here in 1961 as
700 part of that group, were you not? A. Yes, I came back as an observer before the hearings before the various committees.

Q. Now, taking it to 1962, so we can move along here, Mr. Childs, in 1962 the House Ways and Means Committee held hearings on this bill, did it not? A. I am maybe wrong, but I believe the House hearings were in 1961.

Q. Well, didn't the House Ways and Means Committee go into executive session in 1962 and report a bill out on March 16 of 1962?

Mr. Bittman: Your Honor, again I am going to object on relevancy.

The Court: Overruled.

The Witness: I cannot place it exactly as to times. It happened—whether it happened in 1961—my recollection is that most of the action on the tax bill was in 1961 as far as the House was concerned. Maybe it was in the first part of 1962.

By Mr. Williams:

Q. The House bill that was ultimately passed in the spring of 1962 was different, was it not, from the proposal made by the Secretary of the Treasury?

701 A. I cannot answer specifically.

Q. Well, did it not adopt a so-called 60/40 formula? A. Yes, it did. But I do not recall exactly what the recommendation was that was made by the Secretary.

Q. Just to boil it down substantially, and I hope fairly, did it not permit savings and loan associations to set aside 60 per cent of their income as a loss reserve against bad debts? A. Yes.

Q. So, consequently, the effect was savings and loans were taxable on a 40 per cent basis? A. Yes.

Q. Now, your—and when I say “your”—the Savings and Loan League representative here had testified against that provision, had he not? A. Well, representatives of the Savings and Loan—if you are referring to Mr. Troop, I do not recall whether he did but other people did.

Q. Now, it went over to the Senate, did it not, for consideration? A. Yes.

Q. And the Senate Finance Committee began hearings, did it not, in 1962? A. Yes.

Q. And Senator Kerr was a member of that committee, was he not? A. I believe he was.

Q. In fact, you met Senator Kerr in 1962, did you not? A. Yes, I did.

Q. Who introduced you to Senator Kerr? A. Mr. Glenn Troop.

Q. When did he introduce you to Senator Kerr? A. It was during the visit that I was here in September of 1962.

Q. Did you fix that, Mr. Childs, between September 18 and 25? A. In my opinion it was either September 24 or 25.

Q. Well, the period during which you were here? A. Yes, that is right.

Q. You were here for a week, weren't you, during September? A. I was here. If I remember correctly, I think I was here September 19 to 25.

Q. And you talked to Senator Kerr on September 24, or 25? A. I believe that is correct.

Q. Was that up on Capitol Hill? A. Yes, it was.

Q. Capitol Hill? A. Yes.

Q. Do you remember that during the summer of 1962 specifically on July 10 the Senate Finance Committee reported out in an interim report a proposal which, in effect, would have followed the Kennedy Administration Bill? A. Well, I am not able to state that it would follow the Kennedy proposal bill. I know they reported out one.

Q. But it was a bill which you regarded as disastrous to the savings and loan industry, did you not? A. Not disastrous. We thought that we could not get along as well with it as the one we wanted.

Q. I am talking specifically about the report that came out first from the Senate Finance Committee, wherein it did not follow the House Bill but reverted to the original proposal of the Secretary of the Treasury. A. If you could refresh my memory on what was the Secretary of the Treasury, I would be able to answer probably.

Q. I will try to do that. Did not the Secretary of the Treasury, sir, recommend that the provision under which savings and loans were allowed to build up loss reserves to the extent of 12 per cent of their deposits would be abolished? A. Yes, a number of recommendations were made but I am unable to place where they came, whether it was from the Senate, or the committee or from the Secretary of the Treasury.

Q. But in any event, during July and August, your industry was very active here at the level of the Senate in an attempt to change the original proposal that came from the Senate Finance Committee, is that right? A. They were very active on the legislation, yes.

Q. How many of you were here, sir, during July and August? A. I certainly can only estimate. I have no earthly way of guessing but I would assume there would be several hundred here at different times.

Q. Several hundred members? A. Of the savings and loan industry at one time or another during the period you are talking about.

Q. Now, there came a time, did there not, Mr. Childs, when there was a specific proposal which made a distinction taxwise between stock savings and loan associations and which emanated from Senator Kerr in the Senate Finance Committee? A. Yes, that is true.

Q. And that came, did it not, in August of 1962? A. Well, I would not quarrel with that. But I think that was about the period.

Q. And the effect of that proposal, Mr. Childs, was that stock companies would be taxed at a higher rate than mutual companies, is that right? A. Yes, that is true, but he was not serious.

Q. He was not serious? A. I do not believe so.

Q. Well, how did you find out he was not serious, Mr. Childs? A. This I believe will be a matter of hearsay, but the story that we were told after examination by people of the industry, that Mr. Kerr was mad at Mr. Kuchel be-

cause of an event that happened in Medicare and had done this primarily to shake up Mr. Kuchel and he actually had no intention of going along with it.

Q. So that Mr. Kerr had proposed a piece of legislation that was designed to distinguish between stock companies and mutual companies and tax stock companies at a higher rate? A. That was the intent of that particular proposal.

Q. And you, of course, were a spokesman for the stock companies, were you not? A. I was only one of many.

Q. And Mr. Taper and Mr. Wellman, whom you mentioned earlier, likewise associated with stock companies, were they not? A. They were, yes.

Q. And Mr. Stuart Davis, whom you mentioned earlier, was associated with stock companies, was he not? A. He was.

706-707 Q. The net effect of the Kerr proposal was, in simple terms, Mr. Childs, that stock companies would be taxed at approximately a 5 per cent higher rate than mutual companies, right? A. I do not remember of any formula—yes, I believe that is correct.

Q. Yes, because the proposal of Senator Kerr was a 50-50 formula, was it not as against a 60-40 formula? A. No, I am afraid we are talking about different things. There was a number of events and Mr. Kerr made one proposal which was very substantially different than the one you are talking about and this is the one that I referred to as probably he not being very serious about it but he had done so only in retaliation of Mr. Kuchel's action on the Medicare Bill.

However, when they got down to the final version of the Senate Finance Committee, then you are correct and the proposal was that it would be 50-50 for stock companies and 60-40 for mutual companies.

708 Q. And, in fact, Mr. Childs, on September 6 of 1962, that fifty-fifty formula bill passed the United States Senate, didn't it? A. It passed without any opposition from the industry because the industry had reached the conclusion and the League had reached the conclusion that

it would be a mistake of judgment to oppose this action on the Senate because the House had taken a very strong position on the industry being taxed on the 60/40 basis, and the industry had been assured and the League had been assured, and we had been assured by the League, that the conference, in the Conference Committee, would be a 60/40 formula for the entire industry and for that reason there was no attempt to combat this differential in the Senate.

Q. You waited, did you, until there was a Joint Conference between the House and the Senate for this combat to be waged? A. Well, not a combat. I was telling you why we weren't very concerned about it going through the Senate and it wasn't opposed in the Senate where you normally would expect it to be.

Q. Now, the United States Savings and Loan League, I believe, you testified, was made up of 90 per cent mutual companies, was it not? A. That is right.

Q. And only 10 per cent stock companies? A. That is right.

Q. And the mutual companies under the Senate Bill had the benefit of this 60/40 formula? A. Yes.

Q. And only the stock companies had the 50/50 formula, did they not? A. That is true.

Q. And the net effect of that is that the stock companies were being taxed at 10 per cent higher rate than the mutual companies. A. That would have been the effect, but the League was very wise in seeing that the industry could not prosper and could not possibly get along if there would be two different bases of taxation.

Q. But the League spoke both for stock companies and mutual companies—

Mr. Bittman: Your Honor, I am going to again object on relevancy, Your Honor.

The Witness: Yes.

Mr. Bittman: This is well beyond the scope of Mr. Child's direct examination.

710 The Court: Your question on direct, Mr. Bittman, had to do with political contributions.

Mr. Bittman: Yes, Your Honor.

The Court: Mr. Williams is going into the legislation, political legislation that was pending.

I think he has a right to do that, but it would seem, Mr. Williams, that you have covered your point.

By Mr. Williams:

Q. May I have an answer to the last question, Your Honor.

The Court: Yes.

Mr. Williams: Read the question, please.

(The Reporter read the question as follows,

“Q. But the League spoke both for stock companies and mutual companies—”)

The Court: I think the witness has already said it did. In early testimony.

By Mr. Williams:

Q. Now, Mr. Childs, it was after the passage of the Senate Bill that you came to Washington, is that correct? A. Yes.

Q. The Senate Bill had already passed, is that right? A. Yes.

711 Q. And the House Bill had already passed? A. Yes, that is right.

Q. And now in September of 1962 there was a conference set up between the House and the Senate conferees to work out the differences in the two bills, is that correct? A. Yes, that is the procedure when there is a difference.

Q. Is it fair to say that the House version of the Bill was more favorable to your company than the Senate version which it passed? A. Yes, that is correct, basing the 60/40 versus the 50/50.

Q. And it was your intention when you came to Washington with your associates whoever it may have been to

attempt, to make sure that the Bill that was reported out of conference was the House Bill, is that right? A. No, it wasn't quite to that point. We came back because we were interested, of course, in the conclusion of the tax bill, and because I had stated we had received the assurances of the League that they in turn had every confidence that the House Bill would be reported out and we had no way of bringing that about.

Q. You say you had no way of bringing it about.
712 A. We had no way when we came back here of making it happen that way, and that is the way we were told it was going to happen.

Q. What was the reason for your return to Washington?
A. As I stated, I had been following the tax bill and a lot of other industry executives had been following it for a year and a half and this was the final conclusion.

Q. And you had been very very critical of the reputation that your industry had in Congress, isn't that so?

In 1961? A. I didn't feel that they did as well as our competition did, the bankers.

Q. And you had been speaking to the various members of your industry about doing something about this, is that right? A. Yes, we all had.

Q. That was as early as 1961? A. Yes, that is right.

Q. What were you urging them to do? A. Simply to get out and to explain to anyone in Congress, the basic nature of a savings and loan. We found that almost
713 universally, people confused this savings and loan with a commercial bank and going back to one of your questions when you say the tax bill was exactly the same as for commercial banks, it was not in any way exactly the same and neither are the actions of a savings and loan and banks similar hardly any way, but we had found that people in Congress and people who were voting on the tax legislation didn't realize that and so it was important that we do anything we could to make known to them what was the functions and activities of a savings and loan because

we felt that if they understood these things then they would recognize the real necessity of having loss reserve when loans and real estate properties go down.

Q. As early as 1961, Mr. Troop was urging your group to make more political contributions, was he not?

Mr. Bittman: Your Honor, again I will object. I wasn't going back to 1961. I object to it as being beyond the scope of the direct examination.

The Court: Overruled.

The Witness: Yes, Mr. Troop had thought that the industry as a whole, too, had been very backward in becoming politically active.

By Mr. Williams:

714 Q. And you agreed with Mr. Troop? A. Came to that conclusion after making these observations based on over a year and a half of exposure to the Washington situation.

Q. When did you come to the conclusion, Mr. Childs, that your industry should get more politically active. A. I think that I stated that, because again, it seemed to me before the Committee and in the Committee hearings and in my discussions that our industry was not understood. That our opponents, the commercial bankers, seemed to have very many more friends and many more receptive ears than did we.

Q. What did you propose to do about that? A. Only to see if we could make more friends, and to explain our position because we believed in our position.

Q. Make more friends in Congress you mean? A. Yes, anyone who would listen to us, who had any position of having any possible interest in the tax bill.

Q. How did you propose to make more friends, Mr. Childs? A. Knock on doors.

Q. Knock on doors. A. Knock on doors and go and talk to people.

Q. You testified before the Grand Jury, did you
715 not, Mr. Childs, that you had knocked on doors in
1961 of your own California representatives and you
had received a cold reception? A. Yes—cool perhaps is
not the right word. But, still we were not exactly enthusi-
astically received to the extent that we felt we were entitled
to be.

Q. And it was this and other considerations that caused
you to believe that you should become more politically ac-
tive? A. Well, I was a good example. I was the president
of the largest savings and loan in the United States and
before 1961 I had hardly been to Washington. I had made
no effort to do my share in making the facts of my industry
known to people in Washington.

Q. In 1961 and 1962, of course, you came. A. In 1961 I
came and listened to all the Committee hearings and things
of that sort, and in—

Q. (interrupting) Did you begin making political contri-
butions in 1961? A. I don't know personally of any polit-
ical contributions made in 1961.

Q. You know of none, by any members of your industry
or your association? A. Oh, I am sure there were
716 many but I don't know of them personally.

Q. Now, it was in 1962 during the week of Sep-
tember 19 through 25, that you had a conversation with
Mr. Troop that you told us about in response to Mr. Bitt-
man's question? A. Well, I probably—yes, yes, that is cor-
rect with Mr. Bittman's—

Q. (interrupting) What was precisely the conversation
you had with Mr. Troop? A. Mr. Troop asked me if I
would like to meet Mr. Baker.

Q. You had already met Mr. Baker? A. I don't believe
that I did. I testified to the Grand Jury that I thought I
had met Mr. Baker the first time when he gave a talk at
the Legislative Meeting, one of the meetings at the Statler-
Hilton, of the Savings and Loan League, and I had gone
up after the talk together with a large number of others

and simply said, "I am Ken Childs," and introduced myself and that was it, without any discussion. However, as I have attempted to find out, when the talk was, I have not been able to place it specifically, and I have reached the conclusion that the first time I had met him was when I went up with Mr. Troop. It was certainly the first time I had ever met him to the point of having a conversation.

717 Q. Now, did you have your conversation with Mr. Troop about Mr. Baker before or after you had met Senator Kerr with Mr. Troop? A. I am not able to place it. I mean they had no relation to each other, and I simply couldn't place it one way or the other.

Q. Do you remember where it was that you talked to Senator Kerr? A. It was in a large room, empty room, up in the Capitol building.

Q. And who was present with you then, sir? A. Mr. William McKenna, myself, Mr. Kerr, and Mr. Troop. And I don't recall whether Mr. Baker was there or not.

Q. And you are not able to fix that in point of time for us? A. No. Again, my best estimate would be either along September 24 or 25.

Q. Well, if Mr. Baker had been there, you would have met Mr. Baker at that time? A. Of course, and he may have been; I just can't remember.

Q. Does that refresh your recollection that you met Mr. Baker after the meeting with Senator Kerr?

718 A. No, I can't place it, the Kerr meeting with the Baker meeting, in any way; they had no connection. The Kerr meeting was so temporary and flitting.

Q. Well, —

Mr. Bittman: Your Honor, I am going to object to Mr. Williams' consistently interrupting this witness's answers.

The Court: Mr. Williams, will you let the gentleman conclude his answers?

Mr. Williams: If I have interrupted, I am sorry. I thought he had concluded his answer. I don't think, Your

Honor, I have "consistently" interrupted him, and I don't think Mr. Childs would say that. Read that back, please.

(Answer read by the Reporter)

By Mr. Williams:

Q. Have you finished your answer? A. I say, the Kerr meeting was so relatively short. It made no impression on me except it made an impression.

Q. Was there anything you wanted to say over and above before I started the next question? A. No.

Q. Mr. Childs, at the time that you met Mr. Baker near the Capitol in the room that you described, the restaurant or club, did Mr. Troop introduce you and say, "Mr.
719 Childs, I'd like to have you meet Robert Baker."?

A. I believe he did.

Q. Well, does that, sir, refresh your recollection that Mr. Baker was not at the Kerr meeting? A. No, I don't think it would have any connection with it.

Q. You don't have a recollection? A. I don't believe it would refresh my recollection.

Q. You don't have a recollection? A. No, I do not.

Q. In other words, you would not state on the witness stand that Mr. Baker was present at the Kerr meeting?
A. No.

Mr. Bittman: I object—asked and answered three or four times.

The Court: I believe it has been answered.

By Mr. Williams:

Q. Did you and Mr. Troop have lunch at the meeting?

A. At which—?

Q. On September 24. A. No, we did not.

720 Q. You did not have lunch? A. With Mr. Troop?
No.

Q. Mr. Baker came over from the Capitol, is that correct?

A. I don't know where he came from.

Q. It was a very hurried meeting. A. Yes, it only lasted a few minutes.

Q. It lasted about 10 minutes, is that correct? A. I should say so.

Q. You sat down and just talked? A. That is right.

Q. At no time during that meeting did Mr. Baker suggest that you or members of your industry make a contribution? A. Well, he was advocating the industry getting into political activities and he suggested that California industry would make a very impressive contribution if they contributed a hundred thousand dollars to the campaign.

Q. Do you remember testifying before the Grand Jury, Mr. Childs, on September 14 of 1965?

(pause)

Do, you sir? A. Excuse me. I wasn't paying any attention. Would you repeat your question?

Q. Do you remember testifying before the Grand
721 Jury on September 14, of 1965? A. Yes.

Q. Do you remember, first of all, that you were asked on that occasion, about your meeting with Mr. Baker?
A. Yes.

Q. You were asked—

Mr. Bittman: On what page?

Mr. Williams: 8340.

By Mr. Williams:

Q. You were asked, "Have you ever—"

I am sorry. Do you remember saying this, Mr. Childs:
At page 8319, Mr. Bittman.

Mr. Bittman: Thank you.

By Mr. Williams:

Q. Beginning at the bottom of 8318, "Didn't he make any statement as to why he was soliciting campaign contributions for Democrats and Republicans, in view he was a Democrat?" Answer: "I don't believe it is fair to say

he was soliciting; he actually was not." Question: "I see." Mr. Bittman. Answer: "Because the conversation we had was the result of my talking to Troop, and coming to the conclusion this would be a wise thing for our industry to do because we very definitely knew that we probably
722 would be coming to Washington from now on. This was our first exposure to Washington in affairs of great import."

Did you testify to that, sir? A. Yes, I did.

Q. And do you remember that you testified before the Grand Jury on—

Mr. Bittman: I think the record should be clear that he said this was our first *real* exposure. I believe you left the word "real" out. I think it might have import.

Mr. Williams: Did I leave it out?

Mr. Bittman: Yes, you did.

Mr. Williams: I don't see the significance.

I will be glad to accept Mr. Bittman's help here.

By Mr. Williams:

Q. Did you say this was our first real exposure to Washington in affairs of great importance? A. Well, I'll have to read it to remember it word-for-word, but I assume I did, if you are reading it.

Q. Do you remember further that you testified before the Grand Jury that you couldn't remember that Mr. Baker suggested any amount at all as a basis for contributions? A. Yes, I definitely remember I testified—

723 Q. You did testify? A. (continuing)—I testified to that effect.

Q. But today your testimony has been that it was Mr. Baker who suggested a hundred thousand dollars, is that right? A. Yes, sir, that is correct.

Q. Well, was your recollection better this morning than it was when you testified over a year ago before the Grand Jury? A. Yes, it is—for the reason—

Q. You refreshed your recollection? A. Yes, I have. I discussed it with the people I talked to and talked to them about the conversation when I returned, and they pointed out things that refreshed my memory, and made me remember these things.

Q. Have you reviewed your testimony, Mr. Childs, with Mr. Bittman? A. Reviewed my testimony?

Q. Yes. A. He simply advised me when I was coming on, and told me generally the questions that were being asked.

Q. When did he do that? A. I saw him in the Grand Jury, and I saw him, I think, in California on one occasion and I saw him last night for a few minutes.

Q. Well now, where did you see him last night, Mr. Childs? A. At the Madison Hotel.

Q. Madison Hotel. And where did you see him in California? A. At Mr. McKenna's office.

Q. Who is Mr. McKenna? A. Mr. McKenna is an attorney in Los Angeles.

Q. Mr. McKenna is your counsel? A. He is one of the counselors.

Q. Is Mr. McKenna here today? A. Yes.

Q. Is Mr. Ball present, too? A. Yes.

Q. Is Mr. Ball counsel for you, too? A. Yes.

Q. Is he here today? A. Yes.

Mr. Bittman: Your Honor, I object to the irrelevancy of this line of inquiry.

The Court: Yes, Mr. Williams. I think we can get on with the case.

725 By Mr. Williams:

Q. Do you recall that you testified to the Grand Jury, Mr. Childs? That, when you went back to California, and you had your meeting with your associates, that you discussed raising three hundred thousand dollars? A. That is not correct.

Q. I am going to call your attention to your Grand Jury— A. May I state why I made such a statement?

Q. Sure. A. I have read the transcript and told Mr. Bittman this was a typographical error; the conversation was always on one hundred thousand dollars, and this is consistent with all the other testimony.

Q. Let's see if we are talking about the same thing here, Mr. Childs.

At page 8328. And I will show you this, in a moment.— (continuing) Of the Grand Jury Testimony, which was furnished to us by Mr. Bittman, the question was:

“And what is the next thing?

“Was there any discussion about any amount?”

Answer: “Yes.”

And this refers to your meeting in California on 726 I believe you said September 27? A. Yes.

Q. “Yes.” (reading)

Question: “That should be contributed?”

Answer: I cannot place the amount, whether it was with my original conversation with Baker and with Troop, or whether it was decided at this meeting that if they would get into it, that they should raise a total of three hundred thousand and I recall that definitely in discussing it, that Great Western was included in the conversation if Marten was not there.”

Do you recall that, sir? A. This is what the transcript reads but as I have stated it was an error. The three hundred thousand. It should have been one hundred thousand. Mr. Bittman was at the testimony. I am sure he can tell you this is the case.

Q. Now, Mr. Childs, did you tell the Grand Jury that you couldn't remember precisely whether the amount was discussed at your meeting in California or at the meeting in Washington? A. Yes. I definitely stated that and I also told you why I said that statement here.

Q. Since that time, you have had conversations with your colleagues in California, refreshing your recollection? A. Yes, that is right.

Q. Did you have such conversations when you were called here before the Grand Jury? A. No, I had no idea what questions were going to be asked me before the Grand Jury.

Q. When you testified before the Grand Jury, Mr. Childs, you talked about the meeting that you had with Mr. Baker, and at that time, when you were asked whether or not any names were mentioned as beneficiaries of the contributions, you didn't mention Senator Bennett, did you? A. No. I did not. I didn't mention a number of the Senators I mentioned this morning.

Q. You didn't mention Senator Carlson, did you? A. Not at the Grand Jury meeting.

Q. You didn't mention Senator Dirksen, did you? A. No.

Q. Did you mention Senator Fulbright? A. No—wait—yes. Yes, I mentioned—at the Grand Jury, if I remember correctly—I mentioned Senator Fulbright, Senator Smathers, Congressman Mills, and stated there were others that I couldn't fully remember their names. But I have since gone back. I have looked at the list of Senators who were running for office. I have talked to my colleagues. I have discussed with them our conversation. As a result of these actions, I recall the specific names that I have given you.

Q. But at the time you testified before the Grand Jury, you didn't remember the names that you testified on this morning, other than Congressman Mills, whom you identified as Senator Mills before the Grand Jury, Senator Fulbright, and Senator Smathers—

Mr. Bittman: I object. Answered.

The Court: I think we have an answer to that. Sustain the objection.

By Mr. Williams:

Q. Who was it that you talked to, Mr. Childs, who refreshed your recollection with respect to the other names that you have mentioned this morning? A. I talked to Mr. Davis and to Mr. Marten, and to Mr. Wellman, to Mr. Taper, and Mr.—I believe it was—William Ahmanson.

Q. No one of those persons was at the meeting here in Washington? A. Oh no. I recounted my entire happening to them when I reported back at some time or other.

729 Q. When was that? A. Well, I returned if I recall correctly September 26.

Q. When did you have the discussion wherein your recollection was refreshed with respect to these other names? A. After I came back from testifying before the Grand Jury.

Q. After September 14 of 1965? A. Yes.

Q. Now, when your recollection was refreshed with respect to these other names, did you then provide those names to Mr. Bittman? A. Yes.

Q. When did you do that, sir? A. I think when Mr. Bittman was in Los Angeles, I told them that I could recall these specific names.

Q. When was he in Los Angeles? A. Within the last 30 days.

Q. Within the last 30 days, is that correct? A. Yes.

Q. So, you actually waited for approximately a year and three months before giving him those names, is that correct? A. Well, I had no particular reason to discuss the case unless I was called as a witness.

730 Q. Were you furnished with a list of names and asked whether they refreshed your recollection as to any names mentioned? A. No, Mr. Bittman did not do that.

Q. Did anybody else do that? A. No. I asked and got the list of men who were running for Congress, so I could see the names of the people who campaigned that particular year—that ran for Senators—I should say.

Q. Were running? A. Senators running as Senators.

Q. Who was Representative Mills in 1962? Was he the Chairman of the House Ways and Means Committee? A. Yes, he was.

Q. Was that the Committee that had jurisdiction over the legislation that affected the Savings and Loan Associations? A. Well, it was a Committee that was very important to the Legislation in the House.

Q. Now, when you went back—let's pursue this meeting again further, Mr. Childs, of September 24, of 1962. What else was said at this meeting? A. Well, this is the one when I met Mr. Baker?

731 Q. Yes, sir. A. I think I have recounted all I recall.

Q. Everything that was said? A. I told him I would return to California, and I would certainly recommend it. There was no arrangements, no agreement. I did not have any authority to make any sort of a statement that the California industry or my association would enter into making political campaign contributions.

Q. Mr. Baker didn't solicit any campaign contribution from you? A. He had given almost the same talk identically to the entire savings and loan group that they should become very politically active.

Q. He made this talk about a year before? A. I can't say, but sometime to the group. I heard the speech at the Statler-Hilton. I don't know exactly when it was.

Q. You went back to California on the 25th? A. I can't believe it was the 26th but either the 25th or 26th.

Q. But in any event, it was on September 25, wasn't it, Mr. Childs, that the joint Conference reported out the House version of the Bill insofar as the 60/40 formula was
732 concerned? A. I am not able to state that as a positive fact. I do know that on September 25, the two Leagues, United States and the National League, which are savings and loan trade organizations sent out to their membership a circular in which they stated the findings

and conclusions of the Conference Committee. So I would assume it was before September 25.

Q. And the bill that was reported out of the Conference was finally enacted into law in October, was it not? A. I believe that is right.

Q. And specifically, it was signed into law on October 16? A. I am not sure, but I think that is right.

Q. Now, did you have any conversations with Senator Kerr, afterwards? A. After what?

Q. After the Bill was enacted into law? A. No, I only saw Senator Kerr on one occasion, and the occasion lasted probably four or five minutes.

Q. Now, as the result of your meeting in California on I believe you said the 27th of September, was there any activity engaged in by your colleagues in raising the
733 money? A. If you are asking me to draw conclusions, I can.

Q. You don't know of your own knowledge? A. I would have had no part in it and I do not know regarding these activities. I know it was done because I was told it was done.

Q. Well, Mr. Ahmanson, Mr. Howard Ahmanson assigned Mr. William Ahmanson, didn't he, to raise some money? A. Yes, that is right.

Q. And the specification was that the money should be raised in cash, was it not? A. I believe that is correct, although I was not consulted or told or advised about it.

Q. Didn't it strike you as unusual that the contributions that you had decided to make, and I use the term "you" to mean your colleagues and associates—were to be paid in cash? A. Well, I can't speak for my colleagues and associates but I can speak for myself, and at that time as I told you, I was not a part. It had been taken out of my hands by Mr. Ahmanson. I had nothing to do with raising it nor was I consulted regarding the manner or the method of it.

Q. But you were present at the time when Mr.
734 Ahmanson gave cash to Mr. Stuart Davis, is that
right? A. No, I did not so state. I stated Mr.
Ahmanson gave an envelope to Mr. Davis which I assume
had cash, I did not open it.

Q. How big was the envelope? A. It was an ordinary
manila envelope. You know, the eight by ten or some-
thing like that.

Q. You mean it was not a letter-sized? A. No, it was
not a letter-sized.

Q. Was it? A. No, a letter-sized. That is right. Right.
Not a folder letter-sized but a complete ordinary letter
size.

Q. It was brown? A. Yes, manila color.

Q. Was it flat or was it thick, sir? A. Well, honestly,
I didn't notice.

Q. You didn't notice whether it was flat or thick? A. It
was handed by Mr. Ahmanson to Mr. Davis; it was in my
office. I was sitting at my chair, and I had no particular
reason to notice it or anything about it.

Q. Well, did you know what the purpose for which
735 the envelope was given was? A. Yes, I was told.

Q. You knew, did you not, that this was cash that
Mr. Ahmanson was giving to Mr. Davis? A. No, I did not
know—I told you that I only know that a manilla envelope
was given to Mr. Davis.

I do not know what was in it. It was not opened in
my presence.

Q. You had no part whatsoever in the raising of any
one hundred thousand dollars in cash? A. No part what-
ever. I was not asked to contribute anything nor was I
told who did.

Q. Now, thereafter, Mr. Childs, did you as President of
the Home Savings and Loan Association make it a matter
of interest to ascertain who the beneficiaries of this con-
tribution— A. (interrupting) I personally did not.

Q. Well, was it a subject of interest to your lobbyist in Washington, Mr. Troop? A. It would I am sure be of primary interest, because political contacts and political friends is actually the bread and butter of our political representative, and I am sure that he would make every effort to get every credit for each dollar of political
736 contribution that he would know about whether he instigated it or whether he didn't.

Q. What is the date on which the envelope whether it be thick or thin was passed by Mr. Ahmanson to Mr. Davis? A. I can only place it within a couple of weeks after my return to California.

Q. And you returned to California approximately September 26? A. Yes.

Q. So, would you fix it as in the middle of October? A. Yes.

Q. Thereafter, Mr. Childs, did you find out who your friends were in the Senate and in the House that you had determined to make by virtue of political contributions?

A. No, I did not follow up anything in connection with the contributions after it was taken out of my hands.

Q. You don't know anything about who the donors were, is that correct? A. Donors?

Q. Donors. A. Who gave the money, you mean?

Q. Yes. A. No, I do not.

Q. And you don't know who the donees were?
737 A. No, I do not.

Q. Did you have any discussions about this whole matter after the election of 1962? A. I personally did not.

Q. You never discussed it with Mr. Ahmanson? A. No, I did not.

Q. You never discussed it with Mr. Davis? A. No, I did not. You are talking now about who got the money?

Q. Who gave it or who got it. A. No, I did not.

Q. Did you see Mr. Davis and Mr. Marten after that? A. Yes, I see them. Associated in business matters all the time.

Q. Did you see Mr. Wellman and Mr. Taper? A. Yes, that is right.

Q. And, of course, you saw Mr. Ahmanson because he was your principal shareholder? A. That is right.

Q. You saw his nephew, William Ahmanson because he was the Vice President of the bank? A. Yes.

Q. Did you have any discussion thereafter about any acknowledgement from anyone with respect to this
738 money? A. I did not have any discussion nor do I know of any acknowledgement.

Q. Didn't it strike you strange, sir, that you received no acknowledgement from any candidate for the contribution? A. I think it would be strange, but I did not consider it because as I told you, it was taken out of my hands, and I had nothing more to do with it.

Q. Did you or anyone connected with your association make any effort to look at the record filed by the various candidates with respect to their campaign contributions, to ascertain whether members of your industry were listed as donors? A. I did not personally make such an investigation. I do not know whether anyone else did.

Q. Insofar as you know, Mr. Childs, this was a closed subject and not discussed among your colleagues after the election of 1962. A. As far as I know it was. I had the responsibility of running the association and I had a great deal of activity in management, decisions to make and I was kept very busy without worrying about things that I
no longer had a part of.

739 Q. Now, during the conversation that you had with Mr. Baker in 1962, at the restaurant or club, there was no discussion of the pending legislation. A. There was no—

Q. (continuing) Affecting the Savings and Loan. Was there? A. No, there was no discussion at that time because it was pretty well-settled as I stated before.

Q. Was there any discussion when you met with Senator Kerr concerning the legislation? A. My meeting with Sen-

ator Kerr took approximately five minutes and the entire conversation was on two subjects. He congratulated me on Home and its size and its prominence, and the mark that it had made in the industry and he spent most of the time talking to me about gin rummy. I am a avid gin rummy player and I think he was, too.

Q. And Mr. McKenna was present with you at that time?

A. Yes, he was.

Q. And Mr. McKenna had been here during the summer of 1962 as the representative of the industry with respect to this legislation, is that right? A. Yes, he was.

740 Q. Would it be fair to say, Mr. Childs, that he was probably most knowledgeable of anyone connected with your industry with respect to the history of the legislation? A. In my opinion, he was the most knowledgeable and personally I think he was dying to talk but I don't think he opened his mouth during the entire time we saw Mr. Kerr.

Q. And you testified before the Grand Jury, did you not, that you thought it was Mr. McKenna who was the most responsible of anyone for the legislation that the stock companies finally got with respect to their tax liability out of the Revenue Act of 1962? A. Oh, I don't believe that is the case. My recollection is that I testified that Mr. McKenna represented the League. Mr. McKenna did come back at the time of the incident that you mentioned about the change of formulas, and investigated that, and he is the one that is primarily responsible for my knowledge that this was not taken very seriously by Mr. Kerr.

Q. In fact, you told the Grand Jury, did you not, that Mr. McKenna had taken up the problem of the stock companies directly with the White House? A. I don't know there was a stock company—I thought it was the industry problem on the taxes.

741 Q. Did you tell the Grand Jury he had taken up the industry problem directly with the White House?

A. The industry problem—yes, I think I did.

Q. When you say the White House, whom did you mean?
 A. I meant some representative. I don't think with the President.

Mr. Bittman: Your Honor, I am going to object on the grounds of relevancy. There is no relevancy or materiality.

The Court: I will sustain the objection.

By Mr. Williams:

Q. The maximum amount of the political contribution you had made yourself was a two hundred dollar contribution?

A. Yes.

Q. When was that made? A. Sometime in 1962.

Q. Before the campaign of 1962? A. Yes.

Q. Is that correct? A. Yes. I don't recall how far before the campaign but some time before that time.

Q. Now, during 1962, Mr. Childs, specifically on
 742 October 29, 1962, you drew \$10,000 out of your bank, did you not? A. Yes, I did.

Q. American National Bank? A. Yes.

Q. You put it back in the same day.

• • • • •
 771 Q. Mr. Childs, addressing your attention, if I may, to the meeting that you fixed at approximately September 27 of 1962 in California, which Mr. Taper and Mr. Wellman and you, Mr. Childs, and Mr. Howard Ahmanson were present. A. Yes, that was—I know about the meeting.

Q. Did you state at that meeting that whatever contributions were made were to be in cash? A. I told the group about my conversation with Mr. Baker, and I cannot recall any discussion as to the manner of the payment.

There was not even a decision made at that meeting as to whether these contributions were going to be made.

Mr. Taper made the statement that he would decide about it and think about it and there was no conclusion
 772 made at the meeting whatever.

Q. And neither Mr. Marten or Mr. Davis were at

that meeting? A. I don't recall any except the gentlemen that I have mentioned.

Q. So that there was no discussion to the best of your recollection as to what form the contributions were to—

Mr. Bittman: I object. Asked and answered, Your Honor.

The Court: I think he has answered.

By Mr. Williams:

Q. There was no decision whether any would be made at all? A. No decision was made at that meeting.

Q. Now, Mr. Childs, could you in one brief answer tell the Court and jury, as former President of Home Savings & Loan Association, approximately what the tax savings was to Home Savings & Loan in 1963 as the result of the passage of the 60-40 formula as against a 50-50 formula?

Mr. Bittman: I object, Your Honor. It is not relevant and not material to the issues, and it is beyond the scope of direct examination.

The Court: Sustained.

773 I think you can ask him whether or not the decision was beneficial to his industry, but the exact amount he probably couldn't—

Mr. Williams: If the Court please, I only want a rough approximation. I don't expect him to be able to give an exact amount.

I think it is relevant, a rough—

The Court: I will permit him to say whether or not the legislation was beneficial to his organization.

I think if we go into the dollar savings—

The Witness: Well, if I understand the question, probably—is the question that a 60-40 formula is more advantageous than a 50-50 formula?

The Court: Yes.

The Witness: The answer is Yes, a 60-40 formula is more advantageous to any association than a 50-50 formula.

Mr. Williams: May I ask, Your Honor, for him to trans-

late that one instance roughly with respect to one with which he is familiar?

Mr. Bittman: Your Honor, we have been over and over this. I object.

The Court: I think you have an adequate answer. Dollar answers are rather difficult figures.

774 Mr. Williams: I am sorry, Your Honor.

The Court: Dollar answers are rather difficult to figure at this point, and unnecessary.

Mr. Williams: May I ask him if he could give such an answer, Your Honor?

The Court: All right.

Mr. Williams: Easily.

The Court: Yes.

By Mr. Williams:

Q. Could you give us such an answer? A. I would have to make some assumptions and it would be strictly a mathematical answer which anyone could reach and—

Q. Could—

Mr. Bittman: Your Honor, I am going to object. It is clearly not relevant or material and beyond the scope of the direct examination.

The Court: I understand your position, Mr. Bittman. If the gentleman can do so without a great deal of delay, I will permit him to answer your question.

The Witness: The difference between a 60-40 formula and a 50-50 formula would be that there would be ten percent difference in your income which would be taxable, which the net effect would be approximately
775 five percent more of taxes, so whatever your taxes would be, whatever your income would be, if you take five percent of that, I believe, which figuring would be five percent more would be tax—would be taxes.

However, there are many other things that enter into arriving at it and you could not make any broad statement such as I have just done, that five percent would be the net effect of the difference in the formulas.

By Mr. Williams:

Q. The best you can do is to tell us that there would be a five percent difference in your taxes? A. If there were no other factors that entered into the mathematical computation—and I have never seen a case that there wouldn't be other factors that entered into it.

Q. You had—Home Savings & Loan had 23 branches at that time? A. Yes.

Q. I think you told us assets of a billion, six hundred million— A. Approximately that figure as I recall it.

* * * * *

795 By Mr. Williams:

Q. Mr. Childs, I will reframe the question that I asked you a few moments ago.

Directing your attention to your appearance before the Grand Jury on September 14, 1965, do you recall that you said: "I cannot recall who instigated the thought of \$100,000. I don't know. It could have been Troop. It could have been Baker. It could have been just one that we arrived at in California. I don't remember what started it." A. I remember that statement.

Q. Now, Mr. Childs, have you seen Mr. Baker since the meeting that you described on September 24, of 1962? A. Yes.

Q. Have you talked to him? A. Yes.

Q. Have you had conversations with him in 1963? A. Yes, I would say so.

Q. Were they personal conversations or telephone conversations? A. Well, I can't—Yes, I would say they were personal conversations in '63.

Yes, that is right.

796 Q. And— A. And telephone conversations, too.

Q. Was there any discussion about the political contribution that the savings and loan association of which you were president made? A. No, I cannot recall of any

discussion on political contributions with Mr. Baker after the one that I mentioned in September of '62.

Q. All right.

No conversations on this subject with him either personally or over the phone? A. No, that is right.

Q. Now when was it that you saw him in '63?

Mr. Bittman: I object, Your Honor. It is not relevant.

The Court: Overruled.

The Witness: I would assume or guess—to try to place it would be sometime in the spring or summer of '63.

By Mr. Williams:

Q. Where did you see him? A. I saw him at the Beverly Hills Hotel in Beverly Hills.

797 Q. Did you see him again? A. Yes.

Q. Where was that, sir? A. I saw him in my office at Fifth and Olive, Los Angeles.

Q. I am sorry, sir. I didn't hear. A. At Fifth and Olive, in Los Angeles.

Q. Was there any discussion at that time about the contributions? A. No. I stated that there had not been any discussions at any time after my original meeting.

Q. Were they the only two times that you have seen him personally? A. No.

Q. Other than today here. A. No. I have seen him one time crossing the street in Beverly Hills. As far as I can recall, those are the only times that I can remember.

Q. Did you have any telephone conversations with him? A. Yes.

Q. After '62? A. Yes.

Q. How many of those? A. Well, as I recall, I had I believe two.

798 Q. When were they, sir? A. Again I have to estimate that they were in '63.

Q. '63? A. And one was in—probably '64.

Q. Were they of a business or social nature? A. They were of business nature. They had nothing whatever to

do with any social thing or anything in connection with the tax regulation.

Q. Do you recall, Mr. Childs, that in November of 1963, specifically, on November 8, 1963, you were interviewed by Special Agent Hustead and Special Agent Harrison of the Federal Bureau of Investigation. A. Yes, I recall.

Q. You were interrogated about Mr. Baker, is that correct? A. Well, I was interrogated because I was a director of MGIC, and they asked whether I had knowledge about Mr. Baker's business relationships with MGIC, which I did not.

Q. Well, did you tell Mr. Hustead and Mr. Harrison that you were unable to furnish any additional information on Baker or Baker's activities over and above your relationship to MGIC? A. Yes. I had no knowledge what-
799 ever in any respect as far as anything that Mr. Baker did with MGIC.

Q. All right.

Well, I am talking about—I want to show you this, Mr. Childs.

Mr. Williams: Would you mark that, please. I believe it is Defendant's 5 for identification.

The Deputy Clerk: Defendant's Exhibit No. 5 for identification.

(Document marked as Defendant's Exhibit No. 5 for identification.)

By Mr. Williams:

Q. I am going to hand you Defendant's Exhibit 5 for identification, Mr. Childs. A. Yes.

Q. Which is now before you.

I ask you if it is an accurate statement at the bottom wherein it says: Childs said he was unable to furnish any additional information on Baker or Baker's activities. A. Yes. I think this refers to the MGIC.

Q. Well, the first part of your conversation at that time was about Mortgage Guarantee Insurance Company, is that correct? A. Yes.

Q. You were a director of that company, were you not? A. Yes.

Q. Mr. Baker was a shareholder, was he not? A. That's right.

Q. And you told them you didn't have any knowledge that he was a shareholder. A. Yes, that is correct.

Q. Yes.

Y. You told them that you visited Mr. Baker in Washington, is that correct? A. Well, I don't know that I said I—let me see where it says that.

Q. That Childs— A. Oh, yes, that's right.

Q. Childs stated he has visited Washington, D. C., on many occasions at which times he met Mr. Baker who spoke at meetings which Childs attended. A. That's right.

Q. You told them that you had talked to Mr. Baker on five or six occasions.

Isn't that so? A. That's right.

Mr. Bittman: Your Honor, I am going to object to this. This is not impeachment. I object.

801 By Mr. Williams:

Q. You stated that you had—

Mr. Bittman: Your Honor—

The Court: Your objection is well taken. We have been over this material. Mr. Bittman, you just waste further time.

Mr. Williams, can you come to the point and ask him what it is you want to ask him? Let him make his explanation.

By Mr. Williams:

Q. After you finished talking about MGIC, Mr. Hustead and Mr. Harrison asked you if you were able to furnish any information on Baker or Baker's activities, isn't that so?

A. Yes, that is true.

Q. And you said you weren't, did you not? A. Well, I am not able to. I am not able to now as far as his activities are concerned.

Q. You didn't tell them about your conversation with him then on the \$100,000 contribution, did you? A. They didn't ask me.

Q. Well— A. You are talking about Mr. Baker's activities. This is only a discussion regarding the advisability of the savings and loan associations going into political contributions.

I don't consider that one of Mr. Baker's activities.

Q. You didn't consider the episode of September, 1962, as a Baker activity? A. No. Mr. Baker had not made any arrangements. Mr. Baker only was voicing his opinion that it was important for the savings and loan industry to become politically active. No agreements were made. No arrangements were made, or anything of that sort.

Q. In any event, you made no disclosure of the matters which you have testified to here today in your interview on November 8 of '63 with the FBI? A. According to that statement I did not, nor do I consider them pertinent.

Q. Well, apart from this statement, I ask you whether you made any disclosure. A. Perhaps I don't understand you.

Q. Apart from this statement that I have shown you— A. Yes.

Q. And its refreshing of your recollection, did you in fact make any disclosure to the FBI concerning the matters which— A. No, this is my entire statement to the FBI regarding the matter of Baker.

Q. So you made no such disclosure? A. No, I made no other disclosures—

Q. Is this Defendant's Exhibit No. 5 entirely an accurate summary of your interview with the FBI? A. Heavens. I haven't thought about this for so long I would have to think a little while and try to get it back in my mind.

Shall I read it and see?

Q. You can read it.

The Court: Read it to yourself.

(The witness examines document)

The Witness: Yes, I think this covers pretty well the activities that I knew about in Baker, and this is what I testified to in the Grand Jury.

By Mr. Williams:

Q. That is not my question, Mr. Childs. A. What is it?

Q. My question is, is the document which I have handed
804 you, Defendant's Exhibit No. 5, an accurate account
of your interview with the two agents who inter-
viewed you on November 8, '63? A. As I recall it
now, and without any active, concentrated thinking about
it, you are asking me about something that happened three
years ago.

Q. That's right. A. And I am having difficulty other
than what I am reading in remembering it.

I remember the two gentlemen coming. I remember my
conversation. I remember my telling them about the two
instances, and which I explained here, and I believe that
was the extent of our conversation.

Q. Is there anything on that document which is in error?

A. Well, I don't think there is.

(Examining.)

I think as of that time that this is proper.

• • • • •
808 (In Open Court)

Whereupon

William H. Ahmanson

was called as a witness by the Government and having been
duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your name? A. William
H. Ahmanson, A-h-m-a-n-s-o-n.

Q. Where do you reside, Mr. Ahmanson? A. Los Angeles, California.

Q. What is your present business or occupation? A. I am the president of the National American Insurance Company.

Q. Do you hold any position with Home Savings and Loan? A. I am a director of Home Savings and Loan.

Q. How long have you been associated with Home Savings and Loan? A. I believe about ten years.

Q. Is Howard Ahmanson related to you, sir? A. Yes.

Q. How is he related? A. He is my uncle.

809 Q. Now in the latter part of September, Mr. Ahmanson, did you have a conversation with Howard Ahmanson? A. About what?

Q. Pardon? A. I don't understand the question.

Q. Directing your attention to September of 1962, did you have a conversation with Howard Ahmanson concerning Mr. Childs' visit to Washington? A. I did not.

Q. What, if any, conversation did you have with Mr. Howard Ahmanson in late 1962 concerning political contributions? A. The first of October, around the first of October, he asked me into his office and said—

Q. You cannot state what the conversation was. A. All right.

Q. This conversation occurred early October, 1962? A. Yes.

Q. Is it possible to fix a date? A. Only in the first week of October.

Q. Did this conversation concern Mr. Childs' trip to Washington?

Mr. Williams: Your Honor, he is doing by in-
810 indirection what counsel—

Mr. Bittman: I withdraw the question, Your Honor.

The Court: Very well.

By Mr. Bittman:

Q. After you had this conversation with Howard Ahmanson in early October, 1962, did you raise political contributions? A. Yes, I did.

Q. How much money did you raise during that period of time? A. \$33,000.

Q. In what form was the \$33,000? A. It was all cash.

Q. What, if anything, did you do with that money after you raised it? A. I put it in a safe deposit box.

Q. Now, do you recall approximately when you took this money out of the safe deposit box? A. Yes. Around October 16 or 17.

Q. What, if anything, did you do with it at that time, Mr. Ahmanson? A. I took it to Mr. Childs' office and gave it to Mr. Stuart Davis.

811 Q. Is that Mr. Kenneth Childs— A. Yes.

Q. Who at that time was president of Home Savings and Loan? A. Yes.

Q. What kind of an envelope did you put it in? A. A manila envelope.

Q. To the best of your recollection, what were the bills principally made up of? A. Hundred dollar bills.

Q. You gave this to Mr. Stuart Davis, is that correct? A. Correct.

Q. Did you have a conversation with Stuart Davis at the time you gave him this envelope? A. Yes.

Q. You cannot testify to what the conversation was. Now, to the best of your personal knowledge have you or has any other individual ever received any acknowledgments from anyone concerning political contributions for the year 1962 in connection with that \$33,000? A. No, I have not.

Mr. Bittman: No further questions, Your Honor.

The Court: Mr. Williams.

812 Cross-Examination

By Mr. Williams:

Q. Mr. Ahmanson, as I understand it, you hold office in the Home Savings and Loan Association? A. Excuse me.

Q. You are an officer of the Home Savings and— A. No, sir, I am not.

Q. Are you an employee of the Home Savings— A. No, sir, I am not.

Q. Are you in any way connected with the Home Savings? A. I am a director of the Home Savings.

Q. You are a director of Home Savings and Loan? A. Yes.

Q. Are you a stockholder too? A. I am not a stockholder.

Q. Are you connected now with any savings and loan institution in California? A. Yes, with Home Savings, but I am not an officer of it.

Q. With any other ones? A. No, sir.

Q. During the year 1962 were you connected with any savings and loan associations in California other than your directorship in Home Savings and Loan?

813 A. I was the Chairman of the Board of United Financial Corporation, which was the holding company for United Savings and Loan of Englewood, but I am not sure I was in that position in '62. I believe it was in '60 and '59 I was Chairman of the Board.

Q. Your uncle is Mr. Howard Ahmanson, is he? A. Yes.

Q. Mr. Howard Ahmanson is the principal owner of Home Savings and Loan Association, is that correct? A. He is the principal owner of H. F. Ahmanson and Company, which is the principal owner of Home Savings and Loan, that is correct.

Q. In other words, H. F. Ahmanson and Company is a corporation controlled by your uncle—A. Correct.

Q. —which owns the stock in Home Savings and Loan Association? A. Yes.

Q. Is that correct? A. Correct.

Q. And at that time you were serving as a director?

A. Yes.

Q. Now, as I understand your testimony, Mr.
814 Ahmanson, after a conversation with your uncle
Howard, you began a fund raising— A. Correct.

Q. —campaign. A. Yes.

Q. You fix that in 1962? A. Correct.

Q. In October? A. Yes.

Q. Where did you conduct the fund raising campaign?

A. In Los Angeles.

Q. Whom did you solicit? A. You want the names?

Q. I would like the identity as well as the names. A. All
right.

Robert M. DeKruif.

Q. Would you spell that for the reporter? A. D-e-
K-r-u-i-f.

Q. Who is Mr. Robert DeKruif? A. He is the president
of H. F. Ahmanson and Company.

Q. He is the president of the holding company of Home
Savings and Loan? A. Correct.

815 Q. Robert DeKruif? A. Yes, sir.

Q. In that respect is he a subordinate to your uncle
Howard? A. Yes.

Q. Did he make a contribution? A. Yes, he did.

Q. What was his, sir? A. \$5,000.

Q. Yes, sir. A. And David S. Hannah, H-a-n-n-a-h.

He is an executive vice president of H. F. Ahmanson
and Company.

Q. Yes, sir. A. And he contributed \$5,000.

Q. Now, when you got Mr. DeKruif—is that the way you
pronounce it? A. Yes.

Q. Mr. DeKruif's contribution, did he give you a check or
did he give you cash? A. Cash.

Q. Gave you cash.

When you got Mr. Hannah's contribution, did he
816 give you a check or did he give you cash? A. Cash.

Q. And Mr. Hannah occupied what position, sir?

A. Executive vice president of H. F. Ahmanson and Company.

Q. That was the same company that Mr. DeKruif was president of, is that correct? A. Yes.

Q. To that extent he also is a subordinate of your uncle Howard? A. Yes, sir.

Q. Yes, sir. A. Mr. Thomas C. Webster, who is an attorney and has an interest in the Portersville Savings and Loan—I am sorry—United Savings and Loan of Portersville.

Q. Yes, sir. A. He gave \$3,000.

Q. Now, did Mr. Webster give his in cash? A. Yes.

Q. Did you specify that the contribution was to be made in cash? A. I asked for cash, yes.

817 Q. Was that at the direction of anyone? A. Yes, it was at the direction of my uncle.

Q. Your uncle Howard? A. Yes.

Q. Now was the United Savings and Loan Association of Portersville in any way related to the Home Savings and Loan Association? A. No, sir.

Q. Mr. Webster is an owner of that, sir? A. Yes, sir.

Q. Is that a stock company? A. Yes.

Q. Who else? A. Mr. Joe L. Allbritton.

Q. Joe— A. Joe L. Allbritton. A-b-b-r-i-t-t-o-n.

Q. A-b-b? A. Yes.

Q. No. "l"? A. A-l-l. I am sorry. A-l-l-b-r-i-t-t-o-n.

Q. A-l-l-b-r-i-t-t-o-n, is that correct? A. Yes.

818 Q. Who is Mr. Allbritton? A. He is from Houston, Texas, and he owns the San Jacinto Savings and Loan of Houston, Texas.

I cannot spell it.

Q. San Jacinto, J-a-c-i-n-t-o? A. I don't know how to spell it, sir.

Q. Does he live in Los Angeles or does he live in Texas? A. His domicile is in Texas.

Q. But he has a residence in Los Angeles? A. I don't believe so.

Q. Is he an owner of the San Jacinto Savings and Loan?

A. Yes.

Q. How much did he contribute? A. \$10,000.

Q. Was that in cash? A. Yes, sir.

The other \$10,000 came from myself.

Q. Yourself? A. Yes.

Q. Was yours in cash? A. Yes, sir.

Q. Did you cash a check in order to get that money?

A. Partially. I had some cash and some check.

Q. What was the difference?

819 Mr. Bittman: I object, Your Honor.

The Witness: I don't remember.

Mr. Bittman: It is not relevant.

The Court: Sustained.

Mr. Williams: He said he doesn't remember, anyway, so I guess it didn't make much difference.

The Court: I am inclined to agree with you, Mr. Williams.

By Mr. Williams:

Q. Now, so that made up \$33,000, is that correct? A. Correct.

Q. Well, Mr. DeKruif, Mr. Hannah, Mr. Webster, Mr. Allbritton, and Mr. Ahmanson.

All of these persons whom you have identified were either owners, directors or officers of stock in savings and loan associations? A. Yes, sir.

Q. Did you solicit any money from anyone who was not affiliated in some way with a stock savings and loan association?

Mr. Bittman: I object as not being relevant.

The Court: Overruled.

The Witness: No, I did not.

820 By Mr. Williams:

Q. How many other persons did you solicit? A. Well—

Mr. Bittman: I object as not being relevant, Your Honor.

The Court: I will permit the question.

The Witness: Those were the only ones I asked.

By Mr. Williams:

Q. In other words, you asked only four people besides yourself? A. Correct.

Q. To raise the money? A. I didn't even ask my brother for any money.

Q. You didn't ask your brother? A. No.

Q. Did you ask your uncle? A. No, I didn't.

Q. Now when you received these moneys, Mr. Ahmanson, was it all in one hundred dollar bills? A. I believe most of it was, but there could be some smaller denominations.

Q. What would you say the smallest denomination would be? A. \$20.

821 Q. But would you say that at least \$30,000 of it was in hundred dollar bills? A. Possibly.

Q. How thick a packet did it make, Mr. Ahmanson? A. The manila envelope was standard size and I guess it was about that thick (indicating).

Q. Would you say it was about three times as thick as the Bible? A. No, sir.

Q. About twice as thick as the Bible? A. One and a half times.

Q. One and a half times.

Thank you, sir.

Redirect Examination

By Mr. Bittman:

Q. Mr. Ahmanson, why was this money contributed in cash? A. Because—my explanation to me was that we did not—

Mr. Williams: Your Honor, I don't think we can go into an explanation if it is somebody else. I think he said at somebody's direction he got it in cash.

The Court: Yes, I will sustain that objection.

Mr. Bittman: All right, Your Honor.

By Mr. Bittman:

822 Q. Do you know of your own knowledge why the money was—Why did you contribute yours in cash?

A. Because we did not know exactly which Senators it was going to or to how much to the Senators.

Q. Did anyone mention names of Senators to you? A. Yes.

Q. I see.

But you didn't know how much was going to go to what Senator, is that correct? A. Correct.

Q. All right.

Mr. Bittman: No further questions.

Recross-Examination

By Mr. Williams:

Q. Mr. Ahmanson, Mr. Bittman asked you whether you ever got an acknowledgment for your contribution of \$10,000. A. I did not.

Q. You said you did not. A. Correct.

Q. Did you expect to get one, sir? A. No, sir.

* * * * *

826 Whereupon,

Stuart Davis.

called for examination by the Government, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Will you please state your name? A. My name is Stuart Davis.

Q. Please spell the last name. A. D-a-v-i-s.

Q. Where do you reside, Mr. Davis? A. I live in San Francisco.

Q. What is your business and occupation? A. Chairman. Board of the Great Western Financial Corporation.

Q. How long have you been associated with the Great Western Financial Corporation? A. I have been associated with the Great Western Financial Corporation and its affiliates since 1938. Except for war service.

Q. Now that was a savings and loan, a subsidiary of the Great Western Financial Corporation? A. Yes.

Q. What is the name of that savings and loan?
S27 A. There are several subsidiaries. I was president of First Savings and Loan Association.

Q. Directing your attention, Mr. Davis, to the fall of 1962, did you have conversations with anyone concerning political contributions? A. In the fall of 1962?

Q. Yes, sir. A. Yes, I did.

Q. With whom? A. I discussed the matter of political contributions with Mr. John F. Marten.

Q. And who is Mr. John F. Marten? A. Mr. Marten at that time was president of Great Western Financial Corporation.

Q. Did you discuss it with anyone else? A. Yes. With Mr. Kenneth Childs.

Q. Now, as a result of those conversations did you raise any political contributions? A. Yes, I did.

Q. And how much did you raise in political contributions?
A. Five thousand dollars.

Q. Was that in cash? A. Yes, it was.

Q. Now directing your attention to mid-October
S28 of 1962, did you receive any other political contributions from anyone else? A. Yes, I did.

Q. And from whom, please? A. I received contributions from Mr. John F. Marten.

Q. And do you recall how much John F. Marten gave you on that occasion? A. Yes, twelve thousand, one hundred dollars.

Q. So you had a total of \$17,100. Is that correct? A. Yes. That is correct.

Q. And what was the principal denomination of that money? A. Well, mainly hundred dollar bills.

Q. I mean the \$12,100 was also in cash, is that correct?
A. That is correct.

Q. What if anything did you do with that money after you received it? A. Well, I also received an additional amount.

Q. All right. From whom and when? A. On the 17th of October, I received an envelope which I understood contained \$33,000 from Mr. Ahmanson at the Home Savings and Loan Association.

Q. Is that William Ahmanson? A. William Ahmanson.

831 Q. Now, Mr. Davis, to the best of your recollection was the envelope—how big compared to the bible? How large was the content of the envelope that Mr. Ahmanson gave you? Was it one, one and a half, two or three times as thick as the bible or bigger? A. No, it would not be that thick. To the best of my recollection it would not be that thick. It might have been longer, but not as thick as the bible.

Q. I see. Now what was the purpose of the money that you raised during this period of time? A. The purpose of the money was to be—the money was to be contributed to the senatorial campaigns at that time.

Q. To the best of your own knowledge, why was it raised in cash? A. Well for one thing, the money that we were raising was from a number of different people, quite a few people, and it was our understanding that it was to be distributed to quite a number of senators so simply—mechanically it was simpler to raise it in cash. Where you were getting certain amounts, whether it be smaller amounts or larger amounts, from individuals involved.

Q. After you received the envelope from Mr. 832 William Ahmanson, and you yourself had another envelope containing \$17,100, did you not? A. Yes, I did.

Q. Was the \$12,100 principally in one hundred dollar denominations? A. Principally.

Q. Did you go to Washington, D. C.? A. Yes, I did.

Q. Did you take the two envelopes with you? A. Yes, I did.

Q. Approximately when did you arrive in Washington, D. C.? A. I arrived in Washington about five o'clock in the evening on Thursday, October 18.

Q. Now to the best of your recollection, sometime after you arrived in Washington, D. C., did you attempt to call Robert G. Baker? A. When I arrived in Washington—

The Court: I think, Mr. Bittman. Let the witness testify and refrain from leading questions.

Mr. Bittman: All right.

By Mr. Bittman:

Q. After you arrived in Washington, D. C., Mr. Davis, what if anything did you do? A. When I arrived in
833 Washington I called Mr. Glenn Troop and told him I had the funds.

Q. You cannot testify as to that conversation with Mr. Troop if Mr. Baker was not there. After you had the conversation with Mr. Troop what if anything did you do? A. Well, after I talked to Mr. Troop and I followed his suggestion which was to call Mr. Baker.

Q. And did you call—where did you call Mr. Baker to the best of your recollection? A. He gave me his office number. That is, Mr. Troop gave me Mr. Baker's office number, and I called his office. He was out, and I left word that I had called and left my number.

Q. When is the next time—Your Honor, strike that question.

Did you hear from Mr. Baker on a subsequent occasion? A. Yes.

Q. And when was that, sir? A. Sunday morning.

Q. What date would that be? A. It would be the 21st, would it?

Q. 21st of October? A. Yes. 21.

Q. 1962? A. Right.

834 Q. Would you please state to the Court and jury what happened at that time? A. On Sunday morning I think it was in mid—no, it was mid-morning, and I would assume that it was about ten o'clock approximately. I received a telephone call from Mr. Baker, who was replying to my call, and stated that he would like to come up to see me.

Q. And what if anything did you do after you received that telephone call? A. I then went down to the hotel safe where I had deposited the envelopes containing these sums, removed them from the hotel safe and went back to my hotel room to await Mr. Baker.

Q. Did Mr. Baker then arrive? A. Yes.

Q. And would you please state to the Court and jury to the best of your recollection what transpired after Mr. Baker entered your room? A. Well, he came in and apologized for not returning my call earlier, several days, and stated that he had been away and had just gotten back in town, and we had just informal chatter for a very brief time, after which then I opened my briefcase and took out the envelopes and handed them to Mr. Baker.

Q. Now what if anything did you say to Mr. Baker
S35 at the time you handed him the two envelopes?

A. Well, to the best of my recollection, I believe that I said something about the political contributions, as I assumed he knew what they were. I did not—can't remember precise words, but it was something to that effect.

Q. Did you identify the envelopes to Mr. Baker? A. I may have indicated that one was from Mr. Ahmanson and one was from Mr. Marten and myself.

Q. To the best of your recollection,—or I should say is that your recollection? A. That is my best recollection, but I can't be certain of that—but I think that I did.

Q. Do you see Mr. Baker in the courtroom today? A. Yes.

Q. Would you point him out, please? A. Yes, he is right there.

(Witness points.)

Q. Now again to the best of your recollection, Mr. Davis, what if anything did Mr. Baker state to you upon receipt of those two envelopes? A. He thanked me in some casual way and put them in his pocket and got up and left.

Q. I see. A. Almost immediately.

Q. What was your purpose in giving that money
836 to Robert G. Baker? A. Well, the purpose, of
course, of giving it to Mr. Baker was that I had been
told by Mr. Troop—

Mr. Williams: I object, Your Honor, to what he was
told.

The Court: Yes, he can state his purpose.

By Mr. Bittman:

Q. What was your purpose in giving these two envelopes
to Mr. Baker? A. My purpose in giving the envelopes to
Mr. Baker was so that he could turn them over to the
appropriate senatorial campaigns.

Q. Have you ever received any acknowledgment from any
senators or congressmen in connection with those political
contributions? A. No, I have not.

Q. Are you aware of any? A. No, I have not received
any communication.

Mr. Bittman: No further questions.

Cross Examination

By Mr. Williams:

Q. Mr. Davis, I believe that you said that you were
Chairman of the Board of Great Western Financial Cor-
poration in 1962? A. No, sir. No, I stated that I
837 am now Chairman of the Board of Great Western
Financial Corporation. In 1962, I was a member of
the Board of Directors of Great Western Financial Corpo-
ration and I was Chairman of one of its subsidiary associa-
tions.

Q. That was First Savings and Loan Association? A.
Yes, sir.

Q. Of where? A. Of Oakland at that time.

Q. Of Oakland, California? A. Yes.

Q. Great Western is a holding company, is it? A. Great
Western Financial Corporation is a holding company, yes.

Q. Does it hold controlling stock in a number of saving
and loan institutions? A. Yes, it does.

Q. How many? A. Four savings and loans.

Q. Where are they located? A. At the present time—

Q. In 1962 how many were there? A. Seven.

Q. Where were they located? A. Santa Ana, Los Angeles, Bakersfield, San Luis Obispo, San Jose and Oakland.

838 Q. And at that time, were each of those saving and loan associations, Mr. Davis, stock companies as distinguished from mutual companies? A. Yes. Obviously a holding company can only own stock companies.

Q. They are all stock companies? A. That is correct.

Q. And you had the presidency of one of those? A. That is correct.

Q. Companies. Now, in 1962, in October, what relationship did Mr. Marten, Mr. John Marten, bear to the Great Western Financial Corporation? A. Mr. John Marten was president of Great Western Financial Corporation, a member of its Board of Directors, and also a member of the Board of Directors of the subsidiary savings and loan associations.

Q. Did he own the controlling stock in the holding company? A. No, he did not.

Q. Who did, sir? A. No one owns the controlling stock.

Q. Is that on the Board? A. It is on the New York Stock Exchange. It is very widely distributed and there is no controlling owner.

Q. Now, in 1962, October, you, as you described to
839 counsel for the Government, began to raise some money. Is that correct? A. That is correct.

Q. That was in October of '62? A. That is correct.

Q. And I believe that you said that you raised five thousand dollars? A. Yes. That is correct.

Q. From whom did you raise that money, Mr. Davis? A. From Mr. C. W. Ford.

Q. Would you identify him, please, for the Court and the jury? A. At that time, Mr. C. W. Ford was the chief administrative officer of First Savings and Loan Associa-

tion, reporting directly to me as chief executive officer of that Association.

Q. He was the chief administrative officer of the particular savings and loan of which you were the president?

Mr. Bittman: Your Honor, I am going to object to Mr. Williams continuously repeating the witness' testimony.

The Court: You may proceed, Mr. Williams.

840 The Witness: At that time, he was president and chief administrative officer, I was Chairman and chief executive officer. There was a change in title at some point along, in 1961 or 1962. But the two relationships remained the same.

By Mr. Williams:

Q. Did he give you his contribution in cash? A. Yes, he did.

Q. Was that money lent to him by the Savings and Loan? A. No, it was not.

Q. Was it his own funds as far as you know? A. It was his funds.

Q. Do you know whether he had raised it from other people? A. He had borrowed the funds.

Q. Where did he borrow the funds? A. He borrowed the funds from me.

Q. But they were his funds? A. They were his funds after I loaned the mti him. That's right.

Q. Did you lend him the money in cash or by check? A. To the best of my recollection it was in cash.

Q. And then he gave the money back to you. Is that right? A. That's right.

Q. So you handed him the cash and then he handed
841 it back to you and that became part of the \$17,100 that Great Western raised in October? A. That is correct.

Q. Did you actually go through that procedure? A. That is correct.

Q. Of handing him the \$5,000—

Mr. Bittman: I object, Your Honor. Mr. Williams is going on and on.

The Court: It is sustained.

By Mr. Williams:

Q. What was the reason, Mr. Ahmanson, that you did not make the contribution? A. I am not Mr. Ahmanson.

Q. Mr. Davis? A. The reason I did not make the contribution? I had sold my interest in First Savings and Loan Association to the Great Western Financial Corporation some two years before. At that time I was considering either retirement or possibly some other activity. I was not certain that I was going to remain in the Savings and Loan business as a career, and therefore I would not be as likely to make a major political contribution because I felt that I did not really know what my activities were going to be, what my income might be in the future, and furthermore, I feel that—that most people when they are called on to raise money they go out and try to raise
842 money for political contributions, which is what I did.

Q. Did Mr. Ford pay you back that \$5,000? A. Yes, he did in full.

Q. When did he pay it back? A. The following January.

Q. Of 1963? A. Yes.

Q. Did he pay it back to you in cash? A. Either by check or by cash. Probably by cash—probably by check.

Q. You have no recollection? A. I cannot be sure, but I would assume it was by check.

Q. Now the balance of the \$12,100 you got from Mr. Marten. Is that correct? A. That is right.

Q. Do you know whether that was Mr. Marten's money or do you know whether he had raised it? A. No. He stated he had raised the money.

Q. He had raised it from others? A. From others.

Q. Was your \$5,000 in hundred dollar bills? A. Yes.

Q. And was Mr. Marten's \$12,100 in hundred dollar bills? A. Largely in hundred dollar bills.

Q. What other denominations were there, Mr.
843 Davis, if you recall? A. I do not recall.

Q. And when was it that you took possession of the \$17,100? A. I received the \$5,000 on or about the 16th of October from Mr. Ford and then on the—or the 15th, or the 16th. I believe it was a Monday. And then the \$12,100 which was turned over to me by Mr. Marten was on Tuesday the 16th of October.

Q. Now had you made political contributions previously, Mr. —

Mr. Bittman: I object as not being relevant.

The Court: Sustained.

By Mr. Williams:

Q. Did you ever make a contribution in cash before?
A. Yes.

Q. In cash for political campaigns? A. Yes.

Q. Of this size? A. No.

Q. What was the largest one—

Mr. Bittman: I object, Your Honor.

The Court: Sustained.

By Mr. Williams:

Q. You said, I believe, in response to Mr. Bittman's question that you got the money in cash because it
844 was mechanically easy, is that correct, to handle?

A. Yes. It came from a number of parties and we understood that it was to be distributed to a great number of people, a number of candidates.

Q. And this was the reason that you got it in cash?
A. Yes.

Q. And when you say a number of parties, you are talking about yourself and Mr. Ford and those parties whom Mr. Marten so listed? A. That is right.

Q. Of course you do not know from your own personal knowledge whom he so listed? A. No.

Q. You only know what he told you? A. That is right.

Q. You were not present when he did any soliciting?
A. No, I was not.

Q. And it was your idea, was it Mr. Davis—when I say your, I mean yours and Mr. Marten's, to get this money in cash? A. Yes.

Q. Now at some date after October 17, you received a package from Mr. Ahmanson. Is that correct? A. That is correct.

Q. Was that Mr. Howard or Mr. William Ahmanson?

A. Mr. William Ahmanson.

845 Q. And that was what you transported to Washington? A. That is correct.

Q. And gave on October 21, at the Statler Hotel, to Mr. Baker? A. Correct.

Q. Now Mr. Bittman asked you whether or not you had received any acknowledgment for contributions which you or your group had made, and you answered "No." Is that correct? A. That is correct.

Q. Did this come as a surprise to you when you received no acknowledgment? A. No, because number one I had not made any contributions myself and was not expecting an acknowledgment, and secondly, the funds that were being distributed or raised for the Savings and Loan Trade Association—and I had assumed that is where the acknowledgments would have gone to.

Q. Did you ever check to see whether an acknowledgment was sent? A. No, I did not ask anybody if he got an acknowledgment.

Q. Did you ever discuss this matter with Mr. Marten or Mr. Davis or Mr. Ahmanson? A. I am Mr. Davis.

Q. Mr. Marten or Mr. Ahmanson, or anybody else, Mr. Taper, immediately after the contributions were
846 made? A. Did we discuss the matter?

Q. Yes. A. About contributions or acknowledgment, I did not—

Q. Contributions? A. Well, I can't be sure. I presume we may have mentioned them.

Q. Did you discuss the fact that you received no acknowledgment? A. No.

Q. You had no conversations? A. No.

Q. There was never a discussion on that in '63? A. I do not recall discussing that with anyone.

Q. You did not participate in such a discussion? A. I do not recall any such discussion.

Q. Was Mr. Troop, whom you referred to earlier, the lobbyist for the United States Savings and Loan League?

A. He was the employee of the United States Savings and Loan League in Washington, yes.

Q. When you came to Washington on October 18, you called Mr. Troop, is that correct? A. That is correct.

Q. You had not heard from Mr. Baker before that time, had you? A. I had heard from Mr. Baker, yes, and read of him.

847 Q. But you had not heard of him in connection with this matter, had you? A. No.

Q. This was the first you had heard from Mr. Baker when you called Mr. Troop about this particular matter on which you testified? A. Yes, I think that is the first.

Q. When you came? A. That I recall.

Q. On the 18th of October, you called to Washington, you called Mr. Troop to ask him about this money you had. Is that right? A. That is correct.

Q. You expected to deliver it to Mr. Troop? A. Yes.

Q. After your conversation with Mr. Troop you then called Mr. Baker? A. Right.

Q. Had you phoned Mr. Troop for a long time? A. Yes. I have know him for a great many years.

Q. Had Mr. Troop been active on behalf of the United States Savings and Loan League during 1962 when the tax legislation affecting the Savings and Loan Associations was under discussion? A. He was employed by the

848 Savings and Loan League in Washington during that year, yes.

Q. Is Mr. Troop still employed by the Savings and Loan League? A. Yes.

Q. Is he still a lobbyist for them? A. Well, he still is engaging in his activities. I don't know the precise description. I would presume you would call it a lobbyist, yes. It is a government relations assignment.

Q. You call it a government "collations" assignment? A. No, a government business relationship.

Q. You mean government relations assignment? A. I presume, yes.

Q. Is he president of a government savings and loan association? A. Yes.

Q. And a paid employee also? A. A paid employee, yes.

Q. Have you seen Mr. Baker since the meeting on October 21, 1962? A. Yes. I saw him on January 29, 1963.

Q. Did you have any discussion with him, Mr. Baker, concerning the matters that you testified to here this morning? A. No.

849-860 Q. You did not mention them? A. No.

Q. Saw him out in Beverly Hills? A. No, I attended a luncheon in his office in January of '63.

Q. Who was there present? A. In addition to Mr. Baker, there was Mr. Glenn Troop, Mr. Childs, and I believe Mr. Marten.

Q. How long did the luncheon last, sir? A. Oh, I don't know. An hour and a half perhaps.

Q. Was there any discussion at this luncheon by anyone in your presence concerning the matters that you testified to here today? A. No, I do not recall any discussion on them.

Q. There was no such discussion? A. No.

Q. Do you recall that there was no discussion? A. I certainly do not recall any discussion on these matters.

* * * * *

871 Mr. Williams: We have now gone very carefully into whether or not the jury panel with which we were presented on Monday morning was taken from the

array which was empaneled on Wednesday before the trial, which would be Wednesday, I believe, January the 4th. We find that in toto, Your Honor, it was empaneled from the January 4 additional array which was sworn by Your Honor on that date.

If there is any dispute on that, I think we can hear from the Government.

Mr. Bittman: I assume everything is a matter of record. I would like to assure Your Honor that I have not made any check. I haven't had an opportunity to. I assume it is a matter of record in the Clerk's office.

The Court: The origin of those people would certainly be of record.

872 Mr. Williams: The only additional problem remaining on that subject, Your Honor, is what I hope we could do by stipulation if we can get the information from the Clerk, namely, the date on which they were pulled from the box, the jury box.

The Court: I can tell you that because it was the Friday before the last day of the year, the 30th.

Mr. Williams: That would be December 30.

The Court: Right.

Mr. Williams: Of 1966.

The Court: That is right. For whatever value it may have, I can tell you the circumstances under which it was done.

I ran across Judge Sirica, who has had more experience with long cases than I, and I guess that any of the rest of us, and he asked me if I had any jurors coming in for the day on which the panel was to be chosen, or the jury was to be chosen.

When I told him I had not, he said: You had better get on that the first thing. So I did. And we got the three Jury Commissioners down, and they made their selections. We got the United States Marshal up in chambers and he proceeded to assign ten men to serve them at the
873 earliest opportunity. The day Wednesday was selected because that seemed to be the earliest time we could get them in.

Mr. Williams: That would complete our record on this. We are perfectly satisfied, of course, to take that as our record.

The Court: Those are the facts.

Mr. Williams: I would ask the Court to instruct counsel for the Government, if they find that our representation on the composition of the panel, namely, that it was drawn entirely from the array empaneled on Wednesday, January 4, is incorrect, that they would advise the Court, so that that won't be an issue in the case.

That is it.

The Court: That is fine.

If you find anything is inaccurate about what has been said or anything I have said is inaccurate, let me know.

* * * * *

874

John F. Marten

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your name? A. John F. Marten.

Q. Spell the last name, please? A. M-a-r-t-e-n.

Q. Where do you reside, Mr. Marten? A. In Los Angeles, California.

Q. What is your present business or occupation? A. I am a security broker specializing in mergers and sales of businesses, particularly financial institutions, and I am a real estate broker specializing in sales of real estate owned by savings and loans and other financial institutions.

Q. Mr. Marten, did there come a time when you were president of the Great Western Financial?
875 A. Yes, sir.

Q. When was that, please? A. Until June 30, 1964 and for approximately nine years prior thereto.

Q. Directing your attention, Mr. Marten, to September 27, 1962, did you have a conference with anyone on that date? A. Yes, sir.

Q. To the best of your recollection, who was present and where was this particular conference? A. It was in the residence and office of Mr. Howard Ahmanson, who was present, and also present were Mr. Mark Taper, Mr. Charles Wellman and Mr. Kenneth Childs.

Q. To the best of your knowledge, had Mr. Childs recently returned from Washington? A. Yes, sir.

Q. Now, you cannot testify to what took place at that particular meeting, but subsequent to that meeting what if anything did you do, sir? A. I talked to several directors of Great Western Financial about certain of us as individuals raising money for the campaigns of Senators.

876 Q. Did you raise such money? A. Yes, sir.

Q. And how much money did you raise initially? A. \$12,100.

Q. Was that in cash? A. Yes, sir.

Q. And what if anything did you do with that \$12,100 that you initially raised? A. I delivered it—gave it to Mr. Stuart Davis.

Q. Do you recall approximately when you delivered that money to Mr. Stuart Davis? A. Yes, sir.

Q. When, sir? A. October 16, 1962.

Q. Was anyone else present at the time that you delivered this money to Mr. Stuart Davis? A. No, sir.

Q. Was the money principally in one-hundred-dollar bills, to the best of your recollection? A. Yes, it was.

Q. Now, did there come a time, Mr. Marten, when you raised other contributions? A. Yes.

Q. Were these contributions also raised for
877 senatorial campaigns? A. Yes, sir, they were.

Q. How much money did you raise on the second occasion, please? A. 18—correction—\$16,200.

Q. Was that also raised in cash? A. Yes, sir.

Q. And again, were the denominations of the bills principally one hundred dollars? A. Yes, they were.

Q. What if anything did you do with that money?

Let me ask you this: During what period of time did you raise this money? A. It was subsequent to October 20 and probably subsequent to the 22nd, and it was prior to October 29.

Q. I see. Now, after you raised the second political contributions, did you go to Washington, D. C.? A. Yes, I did.

Q. To the best of your recollection, when did you arrive in Washington, D. C.? A. October 31.

Q. 1962? A. 1962.

878 Q. Did your wife come with you? A. Yes, sir, she did.

Q. Now, when you arrived in Washington, D. C., what if anything did you do, Mr. Marten? A. I went to the Carlton Hotel in Washington where I, from the lobby, telephoned upstairs to Mr. Baker who asked me to come to his room. I may have telephoned earlier from the railroad station. I am not clear on that.

Q. I see. Do you see Mr. Baker in the courtroom today? A. Yes, sir.

Q. I see. Now, approximately what time of the day on October 31, 1962 was this? A. Probably between 11 and 12—11:00 a.m. and 12:00 noon.

Q. What if anything occurred, Mr. Marten, when you arrived at the room that Mr. Baker was occupying at that time? A. I introduced myself. He asked me in.

Q. When you introduced yourself, did you tell him what company you represented? A. I stated—I presume I stated that I was with Great Western Financial Corporation.

879 Q. All right. Now what conversation took place when you entered the room, sir? A. Well, in summary it was brief. I wasn't there more than five or certainly more than ten minutes.

We sat in chairs, a coffee table between us. We conversed with general comments of no significance that I can specifically recall.

The general essence of the conversation, to the best of my recollection, was as I took an envelope out of the briefcase, here is the balance of the money that those of us with Great Western agreed to raise, and I either handed it to him or put it on the table. And this I also generally indicated was for the campaigns of Senators in 1962.

Q. Now, in that envelope was there the \$16,200 in cash that you have previously testified about? A. Yes, sir.

Q. What did Mr. Baker do with the money, if you can recall? A. I believe it was left on the coffee table between us. He might have put it in his pocket. I don't know if the envelope was opened, sealed—I don't recall his opening it.

Q. What was your purpose in giving this money to 880 Baker, Bobby Baker at that time and place? A. For the campaigns in the November election of certain Senators.

Mr. Bittman: No further questions.

One further question.

By Mr. Bittman:

Q. Did you ever receive any acknowledgments from any United States Senators in connection with those contributions? A. No, sir, I did not.

Mr. Bittman: That is all.

Cross Examination

By Mr. Williams:

Q. Did you ever receive any complaints from any Senators that they didn't get the money? A. No, sir, I did not.

Q. Mr. Marten, as I understand it, in 1964 you had an official position with Great Western Finance Corporation, is that correct? A. Until June 30, '64, sir.

Q. And that was the same position that you held in 1962, the year about which counsel has been inquiring?

A. That is correct.

881 Q. Was Great Western a holding company, Mr. Marten? A. Great Western Financial Corporation was and is a holding company, yes, sir.

Q. And in 1962 did it hold controlling interest in some savings and loan associations in California? A. Yes, sir.

Q. And was Mr. Davis the president of one of those savings and loan associations? A. He was chairman of the board. I am not sure he was president. I think he was president of the board of one and president of another.

Q. What specifically was your title, sir? A. I was president of the Great Western Financial Corporation. That was my principal title.

Q. That was in 1962? A. Yes, sir.

Q. Now, the seven savings and loan associations which were controlled by Great Western were, of course, in each instance stock companies, were they not? A. Yes, they all were.

Q. Now, in October or September of 1962, I believe you said you participated in a meeting in Mr. Ahman-
882 son's office? A. (Witness nods assent.)

Q. Is that correct? A. That is correct.

Q. That was at his home, was it? A. Yes, sir.

Q. Mr. Ahmanson was the chief—if I may use the term broadly—of Home Savings and Loan? A. Yes, sir.

Q. And present at this meeting were yourself and Mr. Ahmanson— A. (Witness nods assent.)

Q. —and Mr. Taper, and who else was there? A. And Mr. Charles Wellman.

Q. Mr. Charles Wellman. A. And Mr. Kenneth Childs.

Q. And Mr. Childs. And Mr. Childs and Mr. Ahmanson were there representing Home Savings and Loan, is that correct? A. Yes, sir.

Q. Mr. Taper and Mr. Wellman were there representing First Charter, is that correct? A. Yes, sir.

Q. What is the proper name of First Charter, sir?
883 A. First Charter Financial Corporation.

Q. And you alone were there to represent Great Western? A. That is correct.

Q. Mr. Davis was not present, in other words, at that meeting? A. He was not.

Q. Was an agreement arrived at whereby each of the three institutions represented would raise \$33,300, or a third of \$100,000? A. To the best of my knowledge and belief, no agreement was reached or arrived at at that meeting, period.

Q. Excuse me, sir.

After that meeting, did you, Mr. Marten, and your associate, Mr. Davis, undertake to raise \$33,300? A. After counseling with other directors we agreed as individuals to do this, yes.

Q. And was that figure of \$33,300 more or less a quota figure for you? A. This was the amount that we thought we could and would do, yes, sir.

Q. Did you make the determination and advise Mr. Davis that the money was to be raised in cash?
884 A. I can't specifically answer who said what to whom in that regard, regarding various conversations with various of us who have been identified who were at the meeting where this subject of cash was mentioned. I can't say specifically who said it to whom.

Q. But in any event, prior to October 21 of 1962, you, Mr. Marten, raised \$12,100, is that right? A. Yes, sir.

Q. And from whom did you raise that money, Mr. Marten? A. From a Mr. Edward Lasker, a director of Great Western Financial.

Q. How much did you raise from Mr. Lasker? A. \$5,000.

Q. And was that given to you by Mr. Lasker in cash? A. Yes, sir.

Q. And from whom else did you raise this \$12,100? A. \$5,700 from Mr. Marvin Holen of the law firm of Van

Petten and Holen, who are attorneys for many savings and loan associations in the Southern California area, both mutual and stock.

Q. Mr. Holen, is he counsel for your company? A. He was one of a number of attorneys who did work for us, and he—

885 Q. Mr. Holen gave you \$5,700 prior to the 21st day of October of '62, is that correct? A. Yes, sir.

Q. And then Mr. Holen gave you additional money, did he not? A. Subsequently, yes, sir.

Q. In fact, he gave you \$11,300 in additional money, did he not? A. I think it was \$11,600.

Q. \$11,600, which would make his total contribution \$17,300, is that so? A. It was \$11,600 or \$11,500. It was that close.

Q. It was either \$17,300 or \$17,200? A. Yes, sir. I think it was \$17,300, yes, sir.

Q. \$17,300 was his total contribution? A. Yes, sir.

Q. And was this all given in cash? A. Yes, sir, it was.

Q. And was it given in two lots of cash? A. Yes, sir.

Q. Was one given before October 22? A. Yes.

886 Q. And one was given after October 22? A. Yes.

Q. Did you make any arrangement with Mr. Holen to reimburse him for this? A. No, sir.

Q. Was any arrangement, to your knowledge, made to reimburse him for this? A. No, sir.

Q. Was there any discussion about the legality of contributing more than \$5,000 to an individual campaign?

A. I was and am aware of such limitations, but since many Senators' campaigns were in mind, the question was not pertinent or did not seem to be to us at that time.

Q. But you did not earmark any of the \$17,300 of Mr. Holen's money for any specific campaigns, is that correct? A. It was not earmarked by us.

Q. Now directing your attention back again, Mr. Marten, to the period prior to October 21, 1962. When you raised the \$12,100, my understanding is that you received \$5,700

from Mr. Holen and \$5,000 from Mr. Lasker? A. Yes, sir.

Q. Was the balance from you, yourseldf? A. Yes, sir, it was.

887 Q. I would make that to be \$1,400, is that correct?

A. That is correct.

Q. Was it 14 or 15 hundred, sir, that you gave? A. My total was \$1,500.

Q. You gave another hundred dollars later? A. Yes.

Q. You gave \$1,400 first and then \$100? A. Yes, sir.

Q. And this was all in cash? A. Yes, sir, it was.

Q. Was this in hundred-dollar bills? A. There might have been some bills of lesser denominations. The majority were hundred's.

Q. Did Mr. Davis have an additional \$5,000? A. I am told that he did, yes.

Q. Did he give you \$5,000 or did you give him \$12,100 before October 22? A. I gave him \$12,100.

Q. Did you know that he had \$5,000? A. We discussed it and I was aware that he was collecting—going to collect that amount.

Q. Did you know from where he got his money? A. He told me the intent. I was aware of it, yes.

888 Q. Did you know where he had gotten it after he in fact got it? A. He told me that he obtained it from C. W. Ford, and I would have no reason to doubt him.

Q. Did he tell you that he had lent the money to Mr. Ford to give him? A. No, I don't recall that.

Q. He didn't tell you that? A. No, sir.

Q. You don't recall it or he didn't—

Mr. Bittman: I object, Your Honor, it is not relevant.

The Court: Sustained.

By Mr. Williams:

Q. Now, that money, that \$17,100 was given to Mr. Davis before October 22, is that right? Specifically— A. The \$12,100 was given to him, I am quite sure, on October 16.

Q. And then you, Mr. Marten, undertook to raise \$16,200, is that correct? A. Yes, sir.

Q. In cash? A. Yes.

890 Q. Is that a stock company, sir? A. Yes, sir.

Q. And Mr. Holen, I believe you said, was an attorney for savings and loan associations? A. Yes.

Q. Do you know which savings and loan associations he represented besides your own?

Mr. Bittman: I object as not being relevant, Your Honor.

The Court: If the witness knows, he may answer.

The Witness: I know Mr. Holen well enough to know that he and his associate represented a number of associations but I could not name them.

By Mr. Williams:

Q. Were they stock companies, Mr. Marten? A. Well, again, from over the years, having heard names mentioned, there were stock companies and mutual associations.

Yes, to answer your question.

Q. The answer is— A. Yes, there were stock companies and also mutual associations.

Q. Now, when you raised this money from Mr.
891 Holen, Mr. Marten, did you ask Mr. Holen to go out and solicit or did you take the money from Mr. Holen, himself? A. I received the money from Mr. Holen. I did not instruct him as to how to receive the money. By reputation, he has had a lot of fund-raising experience and is capable in this field. But I could not specify precisely from whom the money came.

Q. Are you talking about campaign funding-raising experience? A. Yes, sir.

Q. And so it was on October 31 that you, Mr. Marten, came to Washington with \$16,200? A. Yes, sir.

Q. And that was in an envelope in cash and in principally one-hundred-dollar bills, is that correct? A. That is correct.

Q. Now, Mr. Marten, after your meeting with Mr. Baker on October 31, 1962, did you see Mr. Baker again? A. Prior to today, I believe once, yes.

Q. And when was that, sir? A. On—it was in 1963. I believe it was January 29, in Washington, D. C. I was here for a legislative meeting of the United States Savings and Loan League, and I don't know who mentioned it to me first, Mr. Davis or Mr. Childs or possibly a Mr. Glen Troop, but I was advised that we were invited to a luncheon with Mr. Baker; which I attended.

Q. To your recollection, Mr. Childs was there and you, Mr. Marten, were there, and Mr. Davis and Mr. Baker and Mr. Troop? A. Yes, sir.

Q. At this luncheon, was there any discussion about the moneys that had been contributed by you and your associates? A. I recall no such discussion.

Q. You recall nothing? A. I do not recall—

Q. About this subject being discussed during the course of the luncheon? A. That is correct.

Q. Now, the last question that was posed to you by counsel for the Government was whether or not you had received any acknowledgment that the funds that you raised were delivered to Senators.

Is that correct? A. I believe so, yes, sir.

Q. Well, Mr. Marten, didn't you tell the grand jury, when you appeared there, at Page 8429, on September 14, 893 “From our attorneys and from others, I have heard names of Senators and the fact that they received the money.”

A. I don't recall that. And having given great consideration to it, I cannot be that specific, sir.

Q. Would you look at your testimony at Page 8429, sir? If you wish, you can look at the front of the testimony that I handed to you, Mr. Marten. It is your testimony, is it not?

A. Yes, sir.

I can only say that my words were not carefully chosen.

Q. Well, whether they were carefully chosen or not, sir, did you state what that transcript says that you stated on

that occasion? A. You have read the words, and the words you read are correct.

One moment, please. I am trying to reconstruct.

I had heard the names of Senators mentioned prior to coming back here, and subsequently, but I cannot state that I heard that they received the money specifically.

Q. But in any event, Mr. Marten, you don't deny
894 that you made the answer that I pointed out to you on that date?

Mr. Bittman: I object. Asked and answered, Your Honor.

By Mr. Williams:

Q. Is that right?

The Court: I think so, Mr. Williams. He has made his answer.

You may ask the question, if you wish to ask it.

Mr. Williams: In the light of the statement volunteered, Your Honor, I should like to ask whether or not he denies that he made that answer that I read just a moment ago from Page 8429 of his grand jury testimony.

The Witness: It is there and I must presume that I said it.

By Mr. Williams:

Q. You had never talked to Mr. Baker concerning the transaction about which you have testified at all until October 31, is that correct, of 1962? A. That is correct.

Q. By the way, Mr. Marten, did you give any receipts to the persons from whom you collected money? A. No, sir.

895 Q. When you turned this money over to Mr. Baker, did you take a receipt from him? A. No, sir.

Q. Was there any written record, to your knowledge, made of this transaction? A. No, sir.

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899 Whereupon—

Wilbur D. Mills

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your name? A. Wilbur D. Mills.

Q. What is your occupation, sir? A. I am a Member of Congress.

Q. And from what state are you a Member of Congress? A. Arkansas.

Q. And what District in Arkansas? A. The Second District.

900 Q. And how long have you been a Member of Congress, please? A. I have completed twenty-eight years.

Q. Congressman Mills, did you run for reelection on November 6, 1962? A. Yes, sir.

Q. Did you have an opponent? A. I did not.

Q. Do you know the former secretary to the Senate Majority, Robert G. Baker? A. Yes.

Q. In connection with that November 1962 election, to the best of your knowledge, did Robert G. Baker make any political contribution to you either on behalf of himself or others from October 21, 1962 to any time thereafter? A. He did not.

Mr. Bittman: Your witness.

Cross Examination

By Mr. Williams:

Q. Congressman Mills, did Senator Kerr make funds available to you during—

Mr. Bittman: I object, beyond the scope of direct. I would like to approach the bench.

900-A The Court: Very well.

(Whereupon counsel approached the bench and the following proceedings were held:)

901 (Bench)

Mr. Bittman: Your Honor, this is clearly beyond the scope of direct examination. Mr. Williams knows it. I asked very specific questions, and if Mr. Williams feels he has to put in a defense in this case, he can put it in with any witnesses he wants to put on the witness stand. This is clearly beyond the scope of the examination.

The Court: Mr. Williams.

Mr. Williams: I think, Your Honor, that this question was asked for one purpose, and it was asked so that inference would be drawn that none of the funds that we have been talking about in this trial throughout the day went to Representative Mills.

Now, whether they went to Representative Mills from Mr. Baker or through someone else, I think is hardly the matter. He said Mr. Baker didn't give him any money.

The Court: That may be a defense. I am not going to allow it at this time.

Mr. Bittman: If Mr. Williams wants to put on a defense—

The Court: I have ruled on it. It may be a good defense. I think it is in the defense case. I will exclude it at this time.

902 Mr. Williams: All right.

(Table)

Mr. Williams: Could we come back to the bench a moment, Your Honor?

The Court: Yes, sir.

(Whereupon counsel approached the bench and the following proceedings were held:)

Mr. Williams: Your Honor, I think that the testimony is irrelevant and I think it should be stricken because if he is just going to put people on the stand for the isolated purpose of showing that Baker didn't hand any money to these people, it doesn't prove anything. The question is whether any of these funds went to these men or any of the other people.

The Court: That may be the defense.

Mr. Williams: I don't think—

The Court: I just have to receive the evidence as it comes to me when it appears to be properly presented. I think the evidence so far from this witness is properly presented and I deny your motion to strike.

Mr. Williams: O. K.

(Table)

903 (Whereupon counsel resumed their places and the following proceedings were held:)

The Court: Anything further?

Mr. Williams: I have no further questions, Your Honor.

The Court: Anything further, Mr. Bittman?

Mr. Bittman: No, Your Honor.

Thank you very much, Congressman.

The Court: Thank you, sir. You may be excused.

(Witness excused.)

Whereupon—

James William Fulbright

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your full name and occupation? A. James William Fulbright. I am a United States Senator from Arkansas.

Q. For how many years have you served the United States Senate? A. Since January 1945.

904 Q. Senator, did you run for reelection on November 6, 1962? A. I did.

Q. Senator, do you know the former secretary to the Senate Majority, Robert G. Baker? A. I do.

Q. In connection with that November 1962 election, to the best of your knowledge, Senator, did Robert G. Baker make any political contribution to you either on behalf of himself or others from October 21, 1962 to any time thereafter? A. He did not.

Mr. Bittman: Your witness.

Cross Examination

By Mr. Williams:

Mr. Williams: Is Your Honor's ruling the same with respect to this witness as it was with respect to the last witness, because I would like to ask the same question.

The Court: I will exclude the question I excluded before.

Mr. Williams: Yes, sir. Then I have no questions. Thank you very much, sir.

Mr. Bittman: Thank you very much, sir.

(Witness excused.)

905 Whereupon—

Carl Hayden

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

Mr. Williams: Your Honor, we will stipulate that Mr. Baker made no contribution to Senator Hayden in 1962, personally.

Mr. Bittman: On behalf of himself and others, as the question is phrased?

Mr. Williams: Yes, sir.

The Court: Very well, gentlemen.

Mr. Bittman: All right, fine.

The Court: Senator, your expected testimony has been the subject of a stipulation. We thank you for coming down.

Mr. Williams: May the record show, too, Your Honor, that I would ask him the same question—

The Court: Yes, sir.

Mr. Williams: —which has been excluded with respect to the previous two witnesses.

The Court: Yes, sir.

Mr. Bittman: Thank you very much, Senator.

(Witness excused.)

906 The Court: Counsel come to the bench.

(Whereupon counsel approached the bench and the following proceedings were held:)

906-A (Whereupon counsel approached the bench and the following proceedings were held:)

The Court: Gentlemen, I don't know how many comparable witnesses the Government has at this point.

Mr. Bittman: Every one Mr. Baker mentioned to Mr. Childs, Your Honor.

The Court: It seems to me it might be a simple stipulation. If there is any reservations about a stipulation, we will have it put on.

Mr. Williams: No, sir.

Mr. Bittman: I would like the jury to know that these witnesses are here.

The Court: All right. A stipulation is something that both parties agree to. If you want to put them on, you have them here and you may put them on.

Mr. Bittman: I would like to put them on the stand.

Mr. Williams: You can put them on. I don't have any objection. We have been asked to expedite this. Say they are all here and they will all testify—

Mr. Bittman: I would like to put them on.

Mr. Williams: I will make a stipulation each time.

The Court: All right.

Mr. Williams: I would want to ask the same
907 question each time, Your Honor.

The Court: Mr. Bittman.

(Whereupon Mr. Bittman returned to the bench.)

The Court: Mr. Williams was about to say something else when you left.

Mr. Bittman: Excuse me.

Mr. Williams: If the Government wants to call the witnesses to the stand despite the fact that we are willing to make the stipulation, he can do it in accordance with Your Honor's ruling; but I would ask the right to ask the same question.

The Court: Whether Senator Kerr made the contribution.

I think you have to establish it as part of the defense's case, that Senator Kerr was acting as conduit for Mr. Baker. That hasn't been established and can't be established as part of the Government's case.

(Table)

908 (Whereupon counsel resumed their places and the following proceedings were held:)

Whereupon—

Everett M. Dirksen

was called as a witness by the Government and, having first duly sworn, was examined and testified as follows:

Mr. Williams: We will make the same stipulation with respect to Senator Dirksen, Your Honor.

Mr. Bittman: Your Honor, Mr. Williams is making the stipulation after the Senators are here.

Mr. Williams: I couldn't make the stipulation if I wasn't asked to, Your Honor. We weren't asked to make it.

I will stipulate that Mr. Baker did not contribute to Senator Dirksen's campaign on behalf of himself or others in the year 1962. I will make that stipulation.

I would like to ask the same question which Your Honor has made a ruling on.

Mr. Bittman: In view of that stipulation, Senator Dirksen, thank you very much for coming. Your testimony will not be necessary.

The Witness: Yes, sir.

The Court: Thank you, Senator. I am sorry we were deprived of hearing your golden voice.

The Witness: Thank you, sir.

(Witness excused.)

909 Mr. Bittman: It is rather ironic that Mr. Williams—

The Court: Let's not have any comments, Mr. Bittman.

Mr. Bittman: All right.

Whereupon—

George A. Smathers

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

Mr. Williams: We will make the same stipulation, Your Honor, with respect to Senator Smathers as we have made with respect to Senator Hayden, Senator Fulbright and Senator Dirksen, with the request to ask the same question that was stricken.

The Court: All right, sir.

Suppose you state the subject of the stipulation, if you are willing to enter into a stipulation with Mr. Williams concerning the testimony of Senator Smathers.

Mr. Williams: We have stipulated, Your Honor, that Mr. Baker, himself, made no contribution on behalf of himself or others to Senator Smathers' campaign for reelection in Florida in 1962.

Mr. Bittman: Fine, thank you.

In view of that, Senator Smathers, your testimony, 910 sir, will not be necessary. We appreciate your coming down here. Thank you, sir.

The Court: Thank you, sir.

The Witness: Thank you, Judge.

(Witness excused.)

Whereupon—

Frank Carlson

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

Mr. Williams: Your Honor, we will make the precise stipulation with respect to Senator Carlson as we have made with respect to Senator Hayden, Senator Fulbright, Senator Dirksen and Senator Smathers, and we respectfully request to ask the same question.

Mr. Bittman: Your testimony will not be necessary, Senator Carlson, in view of the stipulation. Thank you very much for coming down.

The Court: Thank you, Senator.

The Witness: Thank you very much.

(Witness excused.)

Whereupon—

Thruston B. Morton

911 was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

Mr. Williams: We will make the same stipulation Your Honor, with respect to Senator Morton as we have made with respect to Senator Hayden, Senator Dirksen, Senator Carlson, Senator Smathers and Senator Fulbright.

The Court: Is that agreeable, Mr. Bittman?

Mr. Bittman: That is fine. I don't believe Mr. Williams did stipulate to Senator Fulbright's testimony.

Mr. Williams: Well, we do stipulate.

Mr. Bittman: Thank you.

Mr. Williams: With again the respectful request to ask the question stricken.

The Court: Same ruling.

Mr. Bittman: In view of that, Senator, your testimony will not be necessary, but I do appreciate very much your coming down here today.

The Court: Thank you, Senator.

The Witness: First day I earned my pay on the taxpayers' pay roll.

(Witness excused.)

Whereupon—

Wallace F. Bennett

912 was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

Mr. Williams: We will make the same stipulation with respect to Senator Bennett, Your Honor, that we made with respect to Senator Smathers, Senator Dirksen, Senator Hayden, Senator Carlson and the other Senator.

The Court: Morton.

Mr. Williams: Yes, sir.

The Court: Is that agreeable, Mr. Bittman?

Mr. Bittman: Yes, it is.

Mr. Williams: With the request to ask the same question.

The Court: Same ruling.

Mr. Bittman: In view of that, Senator, your testimony will not be necessary, but thank you very much for coming down.

The Court: Thank you, Senator.

(Witness excused.)

Mr. Bittman: Your Honor, in view of Mr. Williams' last-minute stipulation, could we have a short recess before we proceed?

The Court: Yes, sir.

913-920 Mr. Williams: Your Honor, I repeat, we weren't asked to stipulate to this. I don't know whether it is necessary to characterize it as a last-minute stipulation.

• • • • •

933 Whereupon,

William F. Francis

was called by and on behalf of the Government as a witness, and after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hansen:

Q. State your name, please. A. William W. Francis.

Q. And where do you live, Mr. Francis? A. 2812 Cowan Circle, Las Vegas, Nevada.

Q. What is your business or occupation? A. I am President of First Western Financial Corporation.

Q. How long have you been president of that corporation, sir? A. Since August 2, 1966.

Q. What was your occupation prior to that time? A. Administrative Vice President.

Q. Of the same corporation? A. Of the same corporation.

Q. For what years? For how long was that? A. I believe it was 1963, '64, '65, and that portion of '66 until August 2, 1966.

Q. Tell us briefly and in general what is First
934 Western Financial Corporation? A. It's a holding corporation and it owns all of the stock of First Western Savings and Loan Association and First Title Insurance Co., both located in Las Vegas, Nevada.

Q. Do you know the defendant, Mr. Robert G. Baker? A. I do not.

Q. Do you know a person named Clifford Jones? A. Yes, sir.

Q. Where does he live? A. He lives in Las Vegas, Nevada.

Q. What is his occupation, if you know? A. He is an attorney.

Q. Did he ever have any business relationship, official business relationship with First Western Financial Corporation? A. Yes, sir.

Q. What was that? A. He was an officer and director of First Western Financial Corporation.

Q. During 1963 and 1964? A. Yes, sir.

Q. Do you know a man named Albert Newmayer? A. Yes, sir.

Q. How long have you known him? A. About 12 years.

935 Q. Was he, has he been officially related to the business of First Western Financial Corporation?

A. Yes, he was.

Q. In what capacity? A. Chairman of the Executive Committee, and a director.

Q. And during what years did that cover, approximately?

A. I believe through 1964. Some portion of 1964.

Q. Is he still with the corporation? A. He is not.

Q. Is he retired? A. He is not with the corporation. I don't know what he is doing.

Q. Are you acquainted with an institution named First Western Savings and Loan Association? A. Yes, sir.

Q. Did you ever work for it? A. Yes, sir.

Q. Where? A. In the Voucher Control Department as Vice President.

Q. In what city? A. Las Vegas, Nevada.

Q. During what years? A. From 1958 to date.

Q. Is there any relationship between First Western
936 Savings and Loan Association and First Western Financial Corporation? A. Yes, there is.

Q. What is that relation? A. First Western Financial Corporation owns all of the outstanding shares of stock of the First Western Savings and Loan Association.

Q. If you know, has Albert Newmayer ever held any position with First Western Savings and Loan Association? A. Yes, he did.

Q. What was that? A. President.

Q. And was that during 1963 and 1964? A. 1963 and a portion of 1964.

Q. Do you know a person named Wayne Bromley? A. I do not.

Q. I am going to show you, Mr. Francis, what has been marked for identification as Government's Exhibits 157 through 691, and will you take them one by one and identify them, please?

(Government Exhibits No. 157 through 169.)

Q. First, let me ask you, are those records of First Western Financial Corporation? A. Yes, they are.

937 Q. All right. Will you identify them, please?

The Deputy Clerk: By number.

The Witness: Exhibit 157 is a statement for services rendered for the month of April 1963 for \$1,000.

By Mr. Hansen:

Q. From whom? A. From Wayne L. Bromley.

Q. If you just state the date of the document, and the transmitter of it and to whom it is transmitted, that will be fine. A. Exhibit 158 dated June 6, 1963, statement for services from Wayne L. Bromley.

Q. To whom is it addressed? A. To the First Western Financial Corporation.

Exhibit 159 dated July 19, 1963, statement from Wayne L. Bromley to First Western Financial Corporation.

Exhibit 160, statement from Wayne L. Bromley dated August 9, 1963, to First Western Financial Corporation.

Exhibit 161, statement from Wayne L. Bromley dated September 2, 1963 to First Western Financial Corporation.

Exhibit 162, statement from Wayne L. Bromley dated October 31, 1963 to First Western Financial Corporation.

Exhibit 163, statement from Wayne L. Bromley dated November 26, 1963, to First Western Financial Corporation.

938 Exhibit 164, statement from Wayne L. Bromley dated December 2, 1963 to First Western Financial Corporation.

Exhibit 165, statement from Wayne L. Bromley dated January 21, 1964 to First Western Financial Corporation.

Exhibit 166, statement from Wayne L. Bromley dated January 30, 1964 to First Western Financial Corporation.

Exhibit 167, statement from Wayne L. Bromley dated May 11, 1964, to First Western Financial Corporation.

Exhibit 168, a statement from Wayne L. Bromley dated April 21, 1964, to First Western Financial Corporation.

Exhibit 169, a statement from Wayne L. Bromley dated July 6, 1964, to First Western Financial Corporation.

Q. Were these documents which you have identified received and kept by First Western Financial Corporation in the regular course of its business? A. Yes.

Q. Was it the regular course of corporation business to maintain and preserve such documents? A. Yes, sir.

Q. Do these statements or invoices that you have identified bear your initials? A. Yes, sir.

Q. And in what, where do your initials appear on them?

A. On the authority for payment.

939 Q. Now I hand you Government Exhibits for identification 170, 171, and ask you if they are records of First Western Financial Corporation? A. Yes, they are.

Q. Will you identify them, please, by exhibit number?

(Government Exhibits No. 170 and 171.)

The Witness: Exhibit 170 is a letter dated May 24, 1963, to Wayne L. Bromley.

By Mr. Hansen:

Q. It is a copy of a letter, is it not? A. A copy of a letter.

Q. All right. A. Exhibit 171 is a letter dated June 25, 1963, to Wayne L. Bromley from First Western Financial Corporation.

Q. Who wrote these letters, Mr. Francis? A. I did.

Q. Were they mailed in the regular course of business of the First Western Financial Corporation? A. Yes, sir.

Q. Mr. Francis, I hand you what have been marked as Government Exhibits 173 through 184, and ask you if they are records of First Western Financial Corporation?

(Government Exhibits 173 through 184.)

940 The Witness: Yes, they are.

By Mr. Hansen:

Q. Will you take then one by one, by exhibit number, and identify them, please? A. Exhibit 173 is a check, number 14017, to Wayne L. Bromley, dated May 21, 1963.

Exhibit 174 is a check, 14131, to Wayne L. Bromley, dated June 25, 1963.

Exhibit 175, check number 14337 to Wayne L. Bromley dated July 30, 1963.

Exhibit 176 is check number 14569 to Wayne L. Bromley dated August 28, 1963.

Exhibit 177 is check number 14633 to Wayne L. Bromley dated September 13, 1963.

Exhibit 178 is check number 14863 to Wayne L. Bromley dated October 15, 1963.

Exhibit 179 is check number 15156, dated December 6, 1963.

Exhibit 180 is check number 15207 to Wayne L. Bromley dated December 23, 1963.

Exhibit 181 is check number 15324 to Wayne L. Bromley dated January 14, 1964.

Exhibit 182 is check number 15446 to Wayne L. Bromley dated February 7, 1964.

Exhibit 183 is check number 16077 to Wayne L.
941 Bromley dated June 3, 1964.

Exhibit 184 is check number 16292 to Wayne L. Bromley dated July 14, 1964.

Q. Mr. Francis, whose signature do those checks bear?

A. One of the signatures is mine.

Q. On all checks? A. On all checks.

Q. Are there two signatures on every check? A. Yes, sir.

Q. All right, sir. Thank you.

Now I hand you what has been marked as Government Exhibit 172 for identification and ask if you will—is that a record of First Western Financial Corporation? A. Yes, sir.

Q. Will you state what it is, please? A. Exhibit 172 is a copy of a letter dated March 18, 1964 to Wayne L. Bromley from First Western Financial Corporation.

(Government Exhibit No. 172.)

Q. Was that letter written by you? A. Yes, sir.

Q. On instructions of anybody in the corporation? A. Yes, sir.

Q. Whose instructions? A. Mr. Newmayer.

942 Q. Was this letter mailed in the regular course of business? A. Yes, sir.

Q. Subsequent to your writing this letter on March 18, 1964, did you receive the invoices which you have previously identified as Government Exhibits 167, 168 and 169? A. Yes, sir.

Q. What are the dates of those invoices? A. Exhibit 167 is dated May 11, 1964. Exhibit 168 is dated April 21, 1964, and Exhibit 169 is dated July 6, 1964.

Q. Were those invoices paid? A. Yes, sir.

Q. Did you receive instruction from anybody to pay those invoices? A. Yes, sir.

Q. From whom? A. Clifford Jones.

Q. About when was that? A. Oh, I would say perhaps around June 1 of 1964.

Q. Where did the conversation take place? A. By telephone.

Q. Telephone. Did you call him? A. Yes, I did.

943 Q. What did you say to him—
Mr. Williams: What is this?

The Court: This is a conversation between the witness and Clifford Jones?

Mr. Hansen: Yes, sir.

The Court: Is there an objection?

Mr. Williams: Yes, sir.

The Court: Sustained.

980 Direct Examination (Continued)

By Mr. Hansen:

Q. Mr. Francis, you testified yesterday, or you identified certain checks yesterday from First Western Financial Corporation, to Wayne Bromley, is that right, sir? A. Yes, sir.

981 Q. Were those checks charged to any certain account on the books of First Western Financial Corporation? A. Yes, sir.

Q. What was that account? A. Legal fees.

Q. I hand you Government's Exhibits 185 and 186 for identification, and ask you if they are records of First Western Financial Corporation? A. Yes, sir.

Q. Will you state what they are, please? A. Exhibit 185 is Form 1099 for the year 1963, showing an amount of \$8,000 for fees payable to—which had been paid to Wayne L. Bromley, by First Western Financial Corporation.

Exhibit 186 is a Form 1099 for the year 1964, which shows fees paid to Wayne L. Bromley in the amount of \$6,000 by First Western Financial Corporation.

(Whereupon, the documents referred to above were marked Government's Exhibits Nos. 185 and 186 for identification.)

By Mr. Hansen:

982 Q. Will you explain to the Court and jury what the Form 1099 is, please? A. The Form 1099 is an information return that is, it is a Treasury Department

Form that is required and must show monies paid to an individual or a corporation that was not subject to withholding.

I believe that is correct.

Q. What is done with the Form 1099 and the copies of the ones it is prepared— A. The original copy is mailed to the Government. The copy is sent to the payee, and the individual receiving money, and the one copy is retained by the company paying the money.

Q. And is that what occurred with respect to Government's Exhibits 185 and 186? A. Yes, sir.

Q. Mr. Francis, in connection with the checks that you have identified payable to Wayne Bromley, do you know what services were rendered for those payments? A. No, sir, I do not.

Q. Do you know Wayne Bromley? A. No, sir.

Q. Have you ever talked to him? A. No, sir.

983 Thereupon,

George J. Breitsch

was called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hansen:

Q. Mr. Breitsch, will you state your full name and spell it for the reporter, please? A. George J. Breitsch. B-r-e-i-t-s-c-h.

Q. Where do you live, Mr. Breitsch? A. 7 Village Green, Orange, New Jersey.

Q. What is your business or occupation? A. Executive Secretary with the United States Freight Company.

Q. How long have you been with the United States Freight Company? A. A little over 37 years.

984 Q. Will you tell the Court and jury what the nature of the business of United States Freight is, please? A. United States Freight Company is a holding company which owns and controls various freight transportation companies.

Q. Have you known a person named Morris Forgash? A. I have.

Q. Has he ever been an officer or employee of U. S. Freight Company? A. He was President for approximately twenty-five years.

Q. Is he living now? A. No, sir.

Q. About when did he die? A. October 1, 1966.

Q. Do you know Robert G. Baker, the defendant? A. No. I do not.

Q. Do you know a person named Wayne Bromley? A. No, sir.

Q. Do you know a person named Stanley Sommer? A. I do.

Q. Where does he live? A. In Washington.

Q. Has he had any official relationship with the
985 United States Freight Company? A. Well, he has an arrangement where he is sort of—represents the United States Freight Company in certain matters.

Q. All right, sir.

Mr. Breitsch, I am going to hand you what have been marked for identification as Government's Exhibits 187 through 211, and I believe you have looked at those before you came into the Court Room, but will you please examine them again?

(Whereupon, the documents referred to above were marked Government's Exhibits 187 through 211, for identification.)

The Court: Has defense counsel seen these?

Mr. Williams: We have them, your Honor.

The Court: All right.

The Witness: I recognize these statements.

By Mr. Hansen:

Q. Are they records of the United States Freight Company? A. Yes.

Q. Are some of those documents initialed by you, 986 personally? A. They are.

Q. I ask you, Mr. Breitsch, to take these exhibits one by one, and by exhibit number identify them, if you will, please, and in the process of doing so, will you state, please, any that are initialed by you. A. Exhibit 187 is a letter dated August 2, 1963, from Mr. S. L. Sommer, to Mr. Morris Forgash, President of United States Freight Company.

Letter dated August 1, 1963, from Mr. Wayne Bromley to Mr. Morris Forgash, Exhibit 188.

The Court: Tell us what that is again, sir. That is the letter from Mr. Bromley?

The Witness: Mr. Bromley, to Mr. Forgash, dated August 1, 1963, Exhibit 188.

Exhibit 189—

Mr. Hansen: Just a moment, Mr. Breitsch.

Mr. Williams: O. K., we have got it.

By Mr. Hansen:

Q. Proceed, please. A. 189 is an invoice dated August 1, 1963, from Mr. Wayne L. Bromley, to Mr. Morris Forgash, in the amount of \$500.00.

Exhibit 190 is a letter dated August 21, 1963, from 987 Mr. Bromley to Mr. Morris Forgash.

Exhibit 191 is a letter dated August 5, 1963, from Mr. Morris Forgash to Mr. Bromley.

Exhibit 192 is a memorandum dated August 22, 1963 from Mr. Forgash to Mr. W. J. Harrison. It bears a rubber stamp signature of Mr. M. Forgash, with the initials S. J. R.

Exhibit 193 is a carbon copy of a memorandum from Mr. Forgash, dated August 15, 1963, to Mr. W. J. Harrison.

Exhibit 194 is a carbon copy of a letter dated October 11, 1963 from Mr. Forgash to Mr. Wayne L. Bromley.

Exhibit 195 is a letter from Mr. Wayne Bromley dated November 8, 1963, to Mr. Forgash.

Mr. Williams: Will you stop him a minute, please?

By Mr. Hansen:

Q. Will you proceed, Mr. Breitsch, please? A. Exhibit 196 is a letter dated April 1, 1964, by Mr. Bromley to Mr. Forgash.

Exhibit 197 is a carbon copy of a letter dated April 21, 1964 from Mr. Forgash to Mr. Bromley.

Exhibit 198 is an original memorandum dated October 14, 1964, from Mr. Forgash to Mr. W. J. Harrison.

Exhibit 199 is an invoice dated September 2, 1963 in the amount of \$500.00 from Mr. Bromley to Mr. Forgash, 988 which bears the rubber stamped signature of Mr. Forgash with my initials.

Exhibit 200 is an invoice dated October 3, 1963 from Mr. Bromley to Mr. Forgash in the amount of \$500.00 with Mr. Forgash's rubber stamped signature plus my initials.

Exhibit 201 is an invoice dated November 4, 1963 in the amount of \$500.00 from Mr. Bromley to Mr. Forgash with Mr. Forgash's rubber stamped signature, plus my initials.

Exhibit 202 is an invoice dated December 2, 1963 in the amount of \$500.00 from Mr. Bromley to Mr. Forgash with Mr. Forgash's rubber stamped signature and my initials.

Exhibit 203 is an invoice dated January 2, 1964 in the amount of \$500.00 from Mr. Bromley to Mr. Forgash with Mr. Forgash's rubber stamped signature and my initials.

Exhibit 204 is an invoice dated January 30, 1964 in the amount of \$500.00 from Mr. Bromley to Mr. Forgash with Mr. Forgash's rubber stamped signature, plus my initials.

March 3, 1964, invoice in the amount of \$500.00 from Mr. Bromley to Mr. Forgash with Mr. Forgash's rubber stamped signature plus my initials.

Invoice dated April 1, 1964, in the amount of \$500.00 from

Mr. Bromley to Mr. Forgash. Initials, M. F. in pen and ink,

Mr. Forgash's initials.

989 Mr. Williams: Excuse me, your Honor.

Mr. Breitsch, would you please read exhibit numbers as you identify them?

The Witness: I am sorry.

That was Exhibit 206.

Exhibit 207 is an invoice dated May 11, 1964, from Mr. Bromley, to Mr. Forgash in the amount of \$500.00, with Mr. Forgash's rubber stamped facsimile signature, and my initials.

Exhibit 208 is an invoice dated August 31, 1964 from Mr. Bromley to Mr. Forgash for \$500.00 with Mr. Forgash's rubber stamp signature and the initials S. J. R.

Exhibit 209 is an invoice dated June 3, 1964 in the amount of \$500.00 from Mr. Bromley to Mr. Forgash with Mr. Forgash's rubber stamped facsimile signature and my initials.

Exhibit 210 is an invoice dated July 6, 1964 in the amount of \$500.00 from Mr. Bromley to Mr. Forgash with Mr. Forgash's rubber stamped signature and my initials.

Exhibit 211 is a statement of July 31, 1964 in the amount of \$500.00 from Mr. Bromley to Mr. Forgash, on which Mr. Bromley's signature appears as having received, apparently received the amount indicated.

990 By Mr. Hansen:

Q. Mr. Breitsch, are those documents which you have identified, I believe they are Government's Exhibits 187 through 211, are they records made or received and kept by United States Freight Company? A. They are.

Q. In the regular course of its business? A. Yes.

Q. And was it the regular course of the business of United States Freight to receive and make and preserve such records? A. Yes.

Q. Is Mr. Francis here today? A. Francis? Harrison?

Q. Mr. Harrison; excuse me. A. He is.

Q. Is he going to identify certain checks then in payment of those invoices? A. I believe he will.

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991 Whereupon,

William J. Harrison

was called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hansen:

Q. Mr. Harrison, will you state your full name, please?
A. William J. Harrison.

Q. Where do you live, sir? A. 12038 Troy Towers, Bloomfield, New Jersey.

Q. What is your business or occupation? A. I am Vice Treasurer of United States Freight Company, New York.

Q. What is your business address, please? A. 345 Hudson Street, New York.

Q. Does Mr. Breitsch have that same address? A. No, he does not.

Q. What is his address? A. 711 Third Avenue, New York.

992 Q. How long have you been with United States Freight Company? A. Forty-four years, plus.

Q. Mr. Harrison, I hand you certain documents which have been marked for identification as Government's Exhibits 212 through 226. I believe you have examined them before you came into Court this morning, but will you examine them briefly again?

Are they records of the United States Freight Company?
A. They are.

Q. Mr. Harrison, will you take them one by one, call off the exhibit number, and identify the document as to what it is, the date, and the amount, please?

(Whereupon, the documents referred to above were marked Government's Exhibits Nos. 212 through 226 for identification.)

By Mr. Hansen:

Q. All right, Mr. Harrison. A. Government's Exhibit 212 is U. S. Freight Company check 28059, August, 1963, in the amount of \$500.00, payable to Wayne L. Bromley.

993 Exhibit 213 is United States Freight Company check 28130 of September 3, 1963, payable to Wayne L. Bromley for \$500.00.

Exhibit 214 is check 28306 of October 1, 1963, in the amount of \$500.00, payable to Wayne L. Bromley.

Exhibit 215 is check number 28523, of November 1, 1963, in the amount of \$500.00 payable to Wayne L. Bromley.

Check 288480 December 19—

Q. Exhibit number? A. 216, in the amount of \$500.00 payable to Wayne L. Bromley.

Check number 28913, is Exhibit 217, of January 2, 1964, payable to Wayne L. Bromley, in the amount of \$500.00.

Exhibit 218 is check number 29133 of February 3, 1964, in the amount of \$500.00, payable to Wayne L. Bromley.

Exhibit Number 219 is check number 29303 of March 2, 1964, in the amount of \$500.00, payable to Wayne L. Bromley.

Exhibit 220 is check number 29493 of April 1, 1964, in the amount of \$500.00, payable to Wayne L. Bromley.

Exhibit 221 is check number 29796 of May 1, 1964, in the amount of \$500.00, payable to Wayne L. Bromley.

Exhibit number 222 is check numbered 9 of June 1, 994 1964, in the amount of \$500.00, payable to Wayne L. Bromley.

Exhibit Number 223 is check number 246 of July 1, 1964, in the amount of \$500.00, payable to Wayne L. Bromley.

Exhibit Number 224 is check number 454 of August 3, 1964, in the amount of \$500.00, payable to Wayne L. Bromley.

Exhibit Number 225 is check number 651 of September 1,

1964, in the amount of \$500.00, payable to Wayne L. Bromley.

Check number—excuse me, Exhibit 226, is check number 867 of October 1, 1964, in the amount of \$500.00, payable to Wayne L. Bromley.

Q. Mr. Harrison, were the checks which you have just identified made in the regular course of business of the United States Freight Company? A. They were.

Q. And was it the regular course of business to make such records? A. Yes.

Q. Are the checks signed by you? A. They are.

Q. All of them? A. All of them.

Q. On or about the dates reflected on the checks? A. Yes, they were made, signed on those dates.

995 Q. Were the checks that you have just identified, Mr. Harrison, charged to any account on the books of United States Freight? A. Yes, they were.

Q. What account was that? A. I believe it is an account called Legal and Professional Services.

Q. I hand you Government's Exhibit 226, and ask you if that is the account that you referred to? A. Yes, this is the account that I referred to and these are the ledger sheets which were taken from the company's general books.

Q. Was this exhibit, Mr. Harrison, Exhibit 226-A, made in the regular course of business of United States Freight? A. Yes, these are the regular postings to the ledgers of the company.

Q. Was it the regular course of business to make such records? A. Yes.

Q. Are the entries therein, were the entries therein made at or about the time of the transactions re-
996 flected on the document? A. They were done within 30 days after the transaction.

Q. All right, sir.

Mr. Harrison, I now hand you what has been marked for identification as Government's Exhibits 227 and 228,

and ask you if those are records of United States Freight Company? A. They are.

(Whereupon, the documents referred to above were marked Government's Exhibits Nos. 227 and 228 for identification.)

By Mr. Hansen:

Q. Will you state what they are, please? A. These are 1099 Forms which are made out at the end of each year and the original of which is sent to the Internal Revenue Department, a copy of which to the name of the person to whom this money was paid. In other words, all items in this particular account that you have seen here are reported to the Government each year on these forms.

The same as you would, similar to it in the same manner as a W-2 Form for Income Tax purposes.

Q. What is the name of the payee? A. The name of the payee on this is Wayne L. Bromley, and they represent actually the checks that you just saw.

998-1015 Cross Examination

By Mr. Williams:

Q. Do you have the exhibit that has been marked Government's 226-A? A. I do.

Q. That is the original, is it, of your ledger cards or ledger sheets for professional services, and that covers legal and accounting services, is that right? A. Legal, accounting and other services.

Q. Legal, accounting and what other services would be charged against that account? A. Whatever services, these individuals may have been paid for. It could have been actuarial fees, accounting fees, or whatever these—

Q. But it would boil down to professional services rendered to your company by lawyers who were accountants or actuaries, is that correct? A. That is correct.

Q. I see by the exhibit you start here in January, 1964, is that right? A. That is correct.

Q. Back here you have the year, 1963, is that right? A. That is correct.

Q. And in January of 1964, I count approximately 1016 20 lawyers or accountants who were compensated for services to your company, is that right? A. That is correct.

Q. Is this small figure that appears down here in pencil at the end of the month the total amount of legal and accounting fees that were paid by your company? A. Those are the fees that were charged off as the expense for that particular month. It may or may not have been paid in that particular month.

Q. Well, you paid your bills didn't you, Mr. Harrison? A. Yes, but some of it is accrued as you can see.

Q. In other words, these are— A. These are the check numbers.

Q. These are the check numbers? A. That is right.

Q. This would show that you had in fact paid them, is that right? A. That is right.

Q. So it was accurate when I asked you if they had been paid for that month? A. It is except for this item here.

Q. Except for one item, which is accrued? A. That is right.

1017 Q. In January of 1964, you paid almost \$30,000 in legal fees and accounting fees, is that right? A. That is correct.

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1022 By Mr. Williams:

Q. Mr. Harrison, I believe that you identified some Form 1099's which were sent to Mr. Bromley? A. I did.

Q. They were sent after 1963 and after 1964, is that correct? A. That is correct.

Q. And those 1099's are Internal Revenue Service forms which advised Mr. Bromley how much money the company paid to him, is that correct? A. That is correct.

Q. And they advised him how much the company paid to him and simultaneously they advised the Internal Revenue Service how much your company had paid to him, is that correct? A. That is correct.

Q. And those forms which are sent out to the payee are sent out for purposes of the payee's tax return, are they not? A. I believe they are, yes.

Q. In fact, they are required to be annexed to the tax return, are they not? A. Yes.

Q. And were those forms in fact sent out to Mr. Bromley prior to February 15 of 1964, and 1965?
1023 A. Yes, they were.

Q. In other words, the 1963 income would be reported to the Internal Revenue Service and to Mr. Bromley prior to February 15, 1964, is that correct? A. That is correct.

Q. And the 1964 income received by Mr. Bromley would be reported prior to February 15, 1965, both to Mr. Bromley and to the Internal Revenue Service? A. That is correct.

Q. I believe Mr. Kostelanetz calls my attention to the fact I misspoke myself: It is the W-2 form that has to be attached to the return, is that right? A. Yes, a W-2 form is given to an individual who receives salaries or wages. On the 1099 form, I don't believe it has to be attached to the individual's return.

Mr. Williams: Yes.

Redirect Examination

By Mr. Hansen:

Q. Mr. Harrison, referring to the Form 1099, Government Exhibit 227 and 228, what is the name and address shown there, on the payee? A. Well, the name and address of the payee on the 1963 form is to Wayne L. Brom-

1024 ley, 605 Headquarters Building, 2000 P Street, N. W.,
Washington, 6, D. C. The one for 1964 was sent to
Wayne L. Bromley, 2000 P Street, N. W., Washington 6,
D. C.

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Whereupon,

Alfred Berk

called for examination by counsel for the Government,
having been duly sworn, was examined and testified as
follows:

Direct Examination

By Mr. Hansen:

Q. Mr. Berk, will you state your full name and spell it
for the Court Reporter, please? A. Alfred Berk, spelled,
B-e-r-k.

Q. Where do you live, Mr. Berk? A. Los Angeles,
California.

Q. What is your business or occupation? A. I am Ad-
ministrative Assistant to the Treasurer at Harvey
Aluminum.

Q. How long have you been with Harvey Aluminum?

A. 20 years.

1025 Q. Will you tell the Court and Jury, please, the
general nature of the business of Harvey Aluminum
Company? A. They are primary producers of aluminum
and fabricators of aluminum products.

Q. Are you acquainted with the firm called Harvey
Aluminum Sales Company? A. Yes, sir.

Q. Is it related in any way to the Harvey Aluminum
Company? A. It is a subsidiary of Harvey Aluminum.

Q. It has been for how long? A. Oh, quite a number of
years.

Q. Do you know a person named Keith Linden? A. Yes,
I do. He is Vice President of Harvey Aluminum Sales,
our Washington representative.

Q. Do you know Robert G. Baker, the defendant? A. No, sir.

Q. Do you know a person named Wayne L. Bromley? A. No, sir.

Q. Mr. Berk, I am going to hand you some documents which have been marked for identification as Government Exhibits 230 through 239, and ask you if they are 1025-A records of Harvey Aluminum Company? A. Yes, sir.

(Whereupon, the documents referred to above were marked for identification Government Exhibits 230 through 239.)

By Mr. Hansen:

Q. Will you take each one, please, by—give the exhibit number and identify the document. A. Government Exhibit 230 is an invoice from Wayne Bromley to Harvey Aluminum for the month of January 1964 for a thousand dollars.

Government Exhibit No. 231 is a similar document for the month of February for a thousand dollars.

By Mr. Hansen:

Q. Will you give the dates of the document as we go? A. Sorry. This is dated March 3rd 1964 for the month of February.

Q. Which is? A. The exhibit number 231.

Exhibit 232—

Mr. Williams: Wait—

Mr. Hansen: Just a minute.

Mr. Williams: We don't have copies of these.

1026 Mr. Hansen: I am informed that copies of all these documents, Mr. Berk has were given to Defense Counsel months ago and they also have a list which reflects what those documents are.

The Court: Well, if Mr. Williams doesn't have them let him see them.

Mr. Williams: We are missing—

The Court: Mr. Williams, Counsel will show you the exhibits and you may examine them.

By Mr. Hansen:

Q. Will you proceed, please, Mr. Berk? A. Exhibit 232, a document, an invoice from Wayne Bromley dated April 1964 for legal services over the month of March for a thousand dollars.

Government Exhibit 233, an invoice from Wayne Bromley dated May 11, 1964 for legal services for the month of April for a thousand dollars.

Exhibit No. 234 dated June 3rd 1964, an invoice from Wayne Bromley for legal services for the month of May for a thousand dollars.

Exhibit No. 235, an invoice from Wayne Bromley, dated July 6, 1964, for legal services for the month of June for a thousand dollars.

1027 Exhibit No. 236, an invoice from Wayne Bromley dated August 15, 1964, for legal services over July 1964 for a thousand dollars.

Exhibit No. 237, invoice from Wayne Bromley dated August 31, 1964, for legal services for the month of August for a thousand dollars.

Exhibit No. 238, an invoice from Wayne Bromley dated September 31, 1964, for legal services for the month of September for a thousand dollars.

Exhibit 6, 1964, for legal services for the month of October for a thousand dollars.

Q. Mr. Berk, were the records you have just identified received in the regular course of business of U. S. Freight? A. Yes, sir.

The Court: You mean Harvey Aluminum.

Mr. Hansen: Excuse me, sir. Thank you, Your Honor.

By Mr. Hansen:

Q. Of Harvey Aluminum? A. Yes, sir.

Q. And were they preserved and maintained in the regular course of business? A. In the regular course of business they were preserved and maintained.

1028

Q. I now hand you some documents which have been marked for identification as Government Exhibits 240 through 247, and I ask you if they are records of Harvey Aluminum Company? A. Yes, they are, sir.

(Whereupon, the documents referred to above were marked for identification Government Exhibits 240 through 247.)

By Mr. Hansen:

Q. Will you take them one by one and identify them as you did the other documents, please? A. Yes.

The Court: Will you show them to counsel if he doesn't have copies?

(Documents exhibited to counsel.)

By Mr. Hansen:

Q. Will you proceed? A. Government Exhibit 240—what is commonly known as a buck slip.

Mr. Williams: What?

1029 The Court: "Buck slip." Old Army terminology, Mr. Williams.

The Witness: Or, a memorandum if that is understandable. From the Office of Keith Linden in Washington, addressed to Harvey Aluminum, approving—

Mr. Hansen: (Interrupting) That is all right.

The Witness: (continuing) Dated March 10.

241 is a similar memorandum from Keith Linden for a transmittal of an invoice. That is dated May 13.

By Mr. Hansen:

Q. What year? A. I am sorry. 1964.

Exhibit No. 242 is another memorandum from the Washington office, dated July 7.

Number 243 is—

Q. What year, sir? A. I am sorry. 1964.

Number 243 is an additional memorandum that is undated.

Number 244—

Mr. Kostelanetz: (interrupting) Isn't that stamped?

1030 By Mr. Hansen:

Q. There is no date on the exhibit at all, is there, Mr. Berk? A. No, sir, there is no date on this one at all.

Q. Is there a stamped date on it? A. No, sir.

Q. What is this (pointing)? A. Oh, I am sorry. That is a perforation that shows when the check was paid.

Q. All right, sir. A. It is dated August 6, 1964.

Number 244 is an additional memorandum dated August 18 from the Washington office.

Number 245 is an additional memorandum dated September 24 from the Washington office.

Number 246 is another memorandum dated October 30, 1964.

Number 247 is an additional memorandum dated November 12, 1964, from the Washington office.

Q. Were those documents you have just identified made and received in the regular course of business of United States Freight? A. Yes, sir.

1031 Q. And was it the regular course of business to make and preserve such documents? A. Preserve those documents. Yes.

Q. I now hand you what has been marked for identification as Government Exhibits 248 through 257 and ask you if they are records of Harvey Aluminum? A. They are checks. Yes.

(Whereupon, the documents referred to above were marked for identification Government Exhibits 248 through 257.)

By Mr. Hansen:

Q. Will you please identify them one by one as you have done the other documents? A. 248 is a check dated February 11, 1964, to Wayne Bromley for a thousand dollars for legal services for the month of January as a description.

249 is a check dated March 19, 1964 to Wayne L. Bromley for a thousand dollars.

Exhibit 250 is a check dated April 9, 1964, to Wayne L. Bromley for a thousand dollars.

Exhibit No. 251 is a check dated May 21, 1964, to Wayne L. Bromley for a thousand dollars.

1032 Exhibit No. 252 is a check dated July 9, 1964 to Wayne L. Bromley for a thousand dollars.

Exhibit No. 253 is a check dated August 6 of 1964 to Wayne L. Bromley for a thousand dollars.

Exhibit No. 254 is a check dated August 27, 1964, to Wayne L. Bromley for a thousand dollars.

Exhibit No. 255 is a check dated October 8, 1964, to Wayne L. Bromley for a thousand dollars.

Exhibit No. 256 is a check dated November 5, 1964, to Wayne L. Bromley for a thousand dollars.

Exhibit No. 257 is a check dated November 25, 1964, to Wayne L. Bromley for a thousand dollars.

Q. Mr. Berk, were the checks you have just identified made by—in the regular course of business of Harvey Aluminum? A. Yes, sir.

Q. And was the regular course of business to make and preserve such checks? A. Yes, sir.

Q. Were the checks issued at or about the dates reflected thereon? A. Yes, sir.

Q. Do you know to whom the checks were mailed? A. We always mailed them to the Washington office, to Mr. Linden.

1033 Q. Mr. Linden? A. Mr. Linden.

Q. Were the checks you have just identified charged to any account on the books of Harvey Aluminum Co.? A. Yes, sir, they went through as professional fees on the books and accounts of Harvey Aluminum.

Q. I now hand you what have been identified as Government Exhibits 258, and 259, and ask you if they are records of Harvey Aluminum Company. A. Exhibit 258—

Q. Are they records of Harvey Aluminum? A. Yes, sir.

Q. State what they are? A. Exhibit 258 is a U. S. Information Return for the calendar year, 1964, commonly known as a form 1099 issued by Harvey Aluminum to Wayne L. Bromley for a thousand dollars.

Government Exhibit Number 259 is U. S. information Return for the calendar year 1964. Also Form 1099. Issued to Wayne L. Bromley. Rather, issued to the Government for Wayne L. Bromley, for nine thousand dollars.

Mr. Williams: In the interest of time, I think the witness misspoke himself on the first form 1099. I think he meant for the calendar year 1963. Is that correct?

1034 Mr. Hansen: No.

Mr. Williams: Both for 1964?

The Witness: Both for 1964. Two different corporations. One for a thousand dollars and one for nine thousand dollars. Both in 1964.

By Mr. Hansen:

Q. Will you please explain what the two corporations were? A. The one for a thousand went through the books of Harvey Aluminum Sales Incorporated, a subsidiary of Harvey Aluminum Corporation. The one for nine thousand dollars went through the books of Harvey Aluminum incorporated, the parent company.

Q. What was done with the originals, 1099 exhibits, Exhibits 258 and 259? A. They were mailed to the Internal Revenue Service in Utah—Ogden, Utah, as per instructions on the form to inform the Federal Government of any monies paid to individuals as services for fees, professional fees, that are not subject to withholding taxes.

Q. All right, sir, and were copies also sent to 1035-1045 the payee? A. All copies of these forms are mailed to the individuals who are being, when they are mailed to the company; and we keep the third copy.

Q. Was that to Mr. Bromley? A. Yes, sir.

Q. What is the address shown to Mr. Bromley? A. Suite 309, 1730 K Street, N. W., Washington, D. C.

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1048 Whereupon

Henry Rollin Harlow

was called as a witness by the Government and having been duly sworn, was examined and testified as follows:

1049 Direct Examination

By Mr. Mittler:

Q. Would you state your full name, please? A. Henry Rollin Harlow.

Q. Where do you live, Mr. Harlow? A. 2109 F Street, Northwest, in the city.

Q. What is your present business or occupation? A. I am Vice President of the L. J. Cowie Company, 809 I Street, Northwest.

Q. How long have you been so employed? A. About seven years.

Q. Mr. Harlow, do you know the defendant, Robert G. Baker? A. I do.

Q. Do you see him here in the courtroom? A. I do.

Q. Would you point him out, please. A. The gentleman at the end of the table, back of the red pitcher.

Q. Did you know a Miss Nancy Carole Tyler? A. I did.

Q. From time to time, Mr. Harlow, did your company take orders for stationery from Mr. Baker and Miss
1050 Tyler? A. We did.

Q. Was this an account that you handled personally? A. Sometimes I did, yes.

Q. Did there come a time, Mr. Harlow, in early 1964 that your company printed stationery for Wayne Bromley? A. That's right, we did.

Q. In connection with that order, did you receive a telephone call? A. My office received a telephone call that was relayed to me.

Q. Do you know from whom that call was received? A. Only from the office of Tucker and Baker.

Q. As a result of that telephone call, what, if anything, did you do? A. I went to the office of Tucker and Baker.

Q. What address did you go to? A. That is 2000 P Street, Northwest, and I think the room was 605.

Q. What happened when you arrived there? A. I identified myself and I was introduced to Miss Tyler.

Q. Where was her office in this suite? A. I don't
1051 know where her office was, but I did accompany her to a private office.

Q. Could you tell us what occurred in this private office at that time and place?

Preliminarily, do you recall the approximate date, sir?
A. I believe it was the 15th of January.

Q. Of what year? A. '64.

Q. Would you tell the ladies and gentlemen of the jury what occurred at that time and place? A. Yes.

Miss Tyler gave me a letterhead and asked me if we could reproduce that with a change in address in a very short period of time.

Q. What was the letterhead that she gave you? A. It was a letterhead of a Mr. Bromley.

Q. Was there an address on the letterhead? A. There was an address that had originally been printed or engraved and that address had been stricken out and there was a handwritten replacement address.

Q. Now who struck out the original address? A. I don't know.

1052 Q. Who inserted the new address? A. I don't know.

Q. I show you what has been marked Government Exhibit 268 for identification.

(Government's Exhibit No. 268 marked for identification.)

Can you identify that, Mr. Harlow? A. Yes, sir. This is the letterhead of Mr. Wayne L. Bromley that was given to me by Miss Tyler containing information that I have just identified, containing also some notes in my own handwriting.

Q. What was that order for? A. That was for 100 letter-heads and 100 envelopes with his change of address.

Q. Did you write that order up? A. I did.

Q. I show you what has been marked Government Exhibit 270 for identification.

(Government's Exhibit No. 270 marked for identification.)

Can you identify that, sir? A. This is the order that I wrote in that office on that date.

Q. Was Miss Tyler present when you wrote up 1053 that order? A. She was.

Q. What, if anything, occurred after you wrote that order up? A. Miss Tyler left the room and came back with a check covering this amount and gave me the check.

Q. Did you see her take the check before she left the room? A. I saw her pick it up from her desk.

Q. From the desk at which she was seated? A. That's right.

Q. Did you see her fill it out? A. I don't remember whether she filled it out there or not.

Q. Do you know whose check that was? A. Mr. Baker's.

Q. When she came back, what, if anything, did you observe? A. That the check was made out to us covering an item of stationery, and signed by Mr. Baker.

Q. I show you what has been marked Government Exhibit 271 for identification, sir.

(Government's Exhibit No. 271 marked for identification.)

1054 I ask you to examine that and tell us whether or not you can identify that. A. This is a photostatic copy of the check I have just referred to.

Q. That is the check that you received from Miss Tyler on that occasion? A. That's right.

Q. Did your company print up this stationery, sir? A. My company did, yes, sir.

Q. I show you what has been marked Government Exhibits 272, and 273 for identification.

(Government's Exhibits Nos. 272 and 273 marked for identification)

Will you examine that, sir, and tell us whether or not you can identify that. A. 272 is a file copy of a No. 10 envelope that we printed with Mr. Bromley's name and address.

Q. What is the address that appears thereon? A. Suite 309, 1730 K Street, Northwest, Washington, D. C.

Q. Do you know, sir, how much stationery was printed? A. 100 letterheads and 100 envelopes.

Q. After the order was completed, what, if any-
1055 thing, did you do? A. I delivered it personally to
Tucker and Baker's office.

Q. Where did you deliver it, sir? A. 2000 P Street,
Room 605.

Q. At the same place that you had taken the order, is
that correct? A. Same place I took the order, that's right.

Q. What period of time elapsed from the time that you
took the order to the time that you delivered it? A. I think
it was two days.

Q. Was there any reason for that? A. Yes. I was
asked if we could produce this stationery quickly. Time
was of the essence.

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1057 Whereupon

Allen J. Berk

was called as a witness by the Government, and having
been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Mittler:

Q. Sir, would you state your full name, please? A. Allen
J. Berk.

Q. What is your present business? A. I am an attorney.

Q. With whom are you employed? A. Right now I am a Graduate Fellow in Research associated with George Washington University.

Q. Directing your attention, Mr. Berk, to the year 1964, where were you employed at that time? A. I was employed for Axel W. Oxholm.

Q. Would you spell that for the reporter? A. O-x-h-o-l-m.

Q. Who is Mr. Oxholm? A. He is an attorney.

Q. Where were his offices located in 1964? A. 2000 P Street, Northwest.

1058 Q. What suite number? A. 605.

Q. Is that the same address and suite number as the offices of Tucker and Baker? A. That's correct.

Q. Did they maintain offices there at that time? A. Yes, they did.

Q. Could you describe for us, Mr. Berk, the physical layout of suite 605 during 1964? A. The door opened up into a small secretary's chamber with a couch. Mr. Baker's office was right behind that. As you walked in the door you could see his office.

The office suite then made an elbow to the right. My office was the first one on the right, followed by Mr. Oxholm's office; Mr. Tucker's was at the end of the corridor.

Q. Did Mr. Baker occupy that office during 1964? A. Yes, he did.

Q. Do you see him here in the courtroom? A. Yes, I do.

Q. The gentlemen seated at the end of the table? A. Yes, sir.

1059 Q. Did you know Miss Tyler? A. Yes, I did.

Q. Did she occupy an office in suite 605 in 1964? A. She had a desk in Mr. Baker's office.

Q. Could you describe for us, Mr. Berk, the physical setup of Mr. Baker's office? A. It was a rectangular room, windows in the back. Mr. Baker's office was in the back of that room.

Miss Tyler's desk was against the wall, as you walk in the office on the left towards the very front of the office.

Q. Now did there come a time, Mr. Berk, in the latter part of 1964 when Mr. Baker and Miss Tyler moved their offices from suite 605? A. Yes, they did.

Q. Do you recall that? A. I recall their moving their offices to a suite across the hall.

Q. Do you recall an unusual incident that occurred at that time? A. Yes, I do.

Q. Would you tell the ladies and gentlemen of the jury what that incident was? A. At that particular time, while they were in the midst of moving, Miss Tyler was emptying out a lot of papers and what have you from her desk, I gather.

In passing the office I noticed a wastepaper basket full of a lot of unused stationery.

I requested Miss Tyler, permission to use that stationery as scrap paper, envelopes to cross whoever's name was off it and use it as my own.

I did get permission to do so and took that stationery to my office.

Q. Did you observe Miss Tyler discard that stationery? A. I noticed the stationery in a wastepaper basket next to Miss Tyler's desk.

Q. I show you what has been marked Government Exhibit 273 for identification.

(Government's Exhibit 273 marked for identification.)

I ask you to take a look at that and tell us whether or not you can identify it. A. Yes, I can. This is stationery which I picked up from the wastepaper basket.

That is attorney stationery. The name of the person who is attorney on it is Wayne L. Bromley, and it is the stationery that I did remove from the wastepaper basket.

Q. How much stationery did you withdraw from the basket on this occasion? A. That particular type of paper there must have been approximately a half a ream: I would say over a hundred sheets of paper.

Q. At this time, Mr. Berk, did Wayne Bromley have an

office in suite 605, 2000 P Street? A. Not to my knowledge, no.

Q. Did you ever see him in that office there during this period of time? A. No, sir.

* * * * *

Whereupon

David McLean Fleming

was called as a witness by the Government and having been duly sworn was examined and testified as follows:

Direct Examination

By Mr. Mittler:

Q. Would you state your full name and spell your 1062 last name for the reporter. A. David McLean Fleming.

Q. Where do you live, Mr. Fleming? A. In Los Altos Hills, California.

Q. What is your present business or occupation? A. I am a management consultant.

Q. How long have you been so employed? A. Four years.

Q. Directing your attention to the year 1963, what was your business or occupation at that time? A. I was President of International Marketing Associates, Inc., the management consulting firm.

Q. Where were the offices of International Marketing located? A. In Los Altos, California.

Q. Could you briefly describe for us, Mr. Fleming, the nature of the business of International Marketing? A. Yes.

They were marketing consultants to advise management, or their clients, on setting up marketing programs for existing products or to introduce new products.

This included market analysis and market surveys.

Q. Now do you know the defendant, Robert G. 1063 Baker? A. I do.

Q. Do you see him here in the courtroom? A. I do.

Q. Is he the gentlemen seated at the end of the table?
A. Yes, sir.

Q. Now during the first six months of 1963 did you have occasion to discuss the business of International Marketing with Robert G. Baker? A. I did.

Q. Could you tell us on approximately how many occasions that occurred? A. There were four or five occasions that I visited Mr. Baker in his office.

Q. At what office are you speaking of? A. This was in the Capitol building.

Q. Was each of these conversations in his Capitol office?
A. Yes, sir.

Q. Could you give us the substance of those conversations? A. Well, at that time my client, my only client, was Studebaker Corporation, and I was attempting to determine what the prospects of future programs for Stude-
1064 baker may be as they applied to the Government programs that were coming up in the next fiscal year.

And I was attempting to get a basis to advise their management on whether there was any significant hope for maintaining the facilities in South Bend, and this was dependent upon whether or not any of the programs under consideration by the Government would lend themselves to the type of facilities and capabilities that Studebaker had.

Q. In connection with that, sir, did you seek the advice of Mr. Baker? A. Yes, I did.

Q. Did he give you advice? A. He gave me general advice on the climate, you might say, of the Government programs as they applied to whether the emphasis on funding would be on outer space or limited warfare or the type of general activity that was coming up in the following year and this would directly influence whether or not there was any hope of Studebaker having an opportunity to bid, and I emphasized they had to bid on these programs.

Q. Now, Mr. Fleming, did there come a time in approximately June of 1963 when you had a conversation with Mr. Baker regarding your obtaining Washington counsel? A. Yes.

1064A Q. Do you recall where that conversation took place? A. That was in Mr. Baker's office.

Q. Was anybody else present? A. No, there was not.

Q. Could you relate to us, Mr. Fleming, what that conversation was, what you said to Mr. Baker and what he said to you? A. The conversation applied again to the general picture for the coming year.

And toward the conclusion of the conversation we touched on the subject of the amount of travel that was required for my coming from California to Washington to determine what the picture was here each time, and I had been doing quite a bit of this travel.

And Mr. Baker indicated this must represent a considerable expense to me and that had I ever given any thought to retaining somebody in Washington who could probably do the same sort of listening post activity, in other words, reporting on the general picture here without the necessity of my traveling from California to Washington each time.

I told him that I had given some thought to that in the past and I thought it had some merit, and he indicated that there were several attorneys in town who acted as
1065 counsel on such matters to other companies and suggested perhaps if I was interested in this—well, as I put it, "Is there anybody you know that I might talk to about this?"

And he suggested that he knew a gentleman here that I could talk to by the name of Wayne Bromley.

Q. Did he further identify Wayne Bromley at that time?

A. No, he simply indicated he was a local counsel and that he felt he would be well qualified.

Q. Now was there any discussion, Mr. Fleming, with respect to an amount of money that Mr. Bromley would work for? A. Yes.

We had discussed the fact that a round trip from California was costing me about \$500 including air fare and hotel space, etc.

And he mentioned that for that type of money I could have somebody here on a monthly basis, \$500 a month, who would represent my interest in obtaining the type of background information that I was interested in.

Q. Did he indicate to you that Mr. Bromley would work for that amount? A. Not that Mr. Bromley would but for that type of money I could have counsel in town—
1066 the amount of money it was costing me to come back here.

Q. Now do you recall anything else that was said? A. Yes.

He indicated that if I was interested in retaining counsel that he would have Mr. Bromley get in touch with me.

Q. What is the next thing that occurred? A. Well, the next thing that occurred was that I received an invoice from a Mr. Wayne Bromley toward the end of July or the first part of August for services in July, in the amount of \$500.

Q. Prior to the time that you received that invoice and subsequent to the conversation you had with Mr. Baker, did you communicate with Mr. Bromley in any way? A. No, I did not.

Q. Did you meet with Mr. Bromley? A. I did not.

Q. I show you what has been marked Government Exhibit 274 for identification and ask you to take a look at that and tell us whether or not you can identify it.

(Government's Exhibit No. 274 marked for identification.)

A. Yes.

1067 This is the invoice I received dated July 30, from Wayne L. Bromley, indicating that it was for legal services rendered in the month of July in the amount of \$500.

Q. Now, as a result of your having received that invoice, what, if anything, did you do? A. I did nothing.

Q. What is the next thing that happened? A. Well, the next thing that happened was around the first of Septem-

ber I received the second invoice, dated the latter part of August, I believe, which indicated essentially the same thing.

Q. Prior to your receipt of the second invoice had you spoken with Mr. Bromley? A. No, I had not.

Q. Had you met Mr. Bromley? A. I had not.

Q. I show you what has been marked Government Exhibit 275 for identification.

(Government's Exhibit No. 275 marked for identification.)

Can you identify that, sir? A. Yes.

This is the second invoice that I received again 1068 from Mr. Bromley at the 2000 P Street address.

It has his name on the bottom and it says: Legal service, month of August \$500.

Q. What, if anything, did you do as a result of having received that invoice? A. Well, immediately I did nothing, but shortly after I felt considerable embarrassment in having found myself in the position of being invoiced by an individual I hadn't met, and had not retained.

And so I felt that pending an opportunity to sit down and talk to Mr. Bromley about what he intended to do or what he had done, I felt at least a tacit obligation to honor the first invoice until I had a chance to talk to him and so I made out a check, addressed an envelope to the P Street address, the check was in the amount of \$500, and I mailed it to Mr. Bromley.

Q. And what happened, sir? A. Well, the address on the envelope was wrong. As I recall it said 200 P Street instead of 2000, and the envelope and check were returned.

And when they were returned I felt at that time I would decide to simply—rather than wait until I had a chance to talk to Mr. Bromley, send him a letter indicating 1069 that I elected not to retain his services and I destroyed the check.

Q. I show you what has been marked Government Exhibit 276 for identification.

(Government's Exhibit 276 marked for identification.)

Can you identify that, sir? A. Yes.

That is the letter that I wrote to Mr. Bromley dated 1, October, in which I told Mr. Bromley that the retainer agreement was terminated, that I found it not necessary to use his services as anticipated.

Q. Did you send that letter? A. Yes, sir.

Q. To whom did you send it? A. It went to Mr. Bromley at the 2000 P Street address, which was indicated on the letterhead of the invoices.

Q. Has Wayne Bromley ever performed any services whatever for you? A. He has not.

Q. Have you ever spoken to Wayne Bromley? A. No, sir.

Q. Have you ever met Wayne Bromley? A. No, sir, I haven't.

* * * * *

1071 Cross Examination

By Mr. Williams:

Q. Mr. Fleming, as I understand it this is the first invoice that you received, is that correct, dated July 30, 1963? A. Yes, sir.

Q. And marked, I believe, as Government's Exhibit 274, is that correct? A. Where is the 274? Oh, I am sorry. Yes, that is correct.

Q. You did not pay that immediately, is that right? A. That is right.

Q. When was it that you sent a check on that, sir? A. On 10 September, 1963.

Mr. Williams: Was that check put in?

Mr. Mittler: He testified the check was destroyed.

The Witness: The check was destroyed.

1072 By Mr. Williams:

Q. You sent the check. It came back. You did not retain it. You destroyed it. Is that right? A. That is correct.

Q. And thereafter you received a second invoice, did you, from Mr. Bromley? A. Yes.

Q. Marked as Government's Exhibit 275? A. That is correct.

Q. That was dated September 2, 1963, is that correct? A. Yes, sir.

Q. Did you pay that one? A. No, sir.

Q. So you paid neither? A. That is correct.

Q. And on October 1 you wrote Mr. Bromley a letter, is that correct? A. That is correct, sir.

Q. And you said to him that the retainer agreement that you had discussed—this is to advise that the retainer agreement we had discussed is hereby terminated. Is that correct? A. Yes, sir.

1073 Q. We have not found it necessary to use your services as we had anticipated.

Is that correct? A. That is what it says, yes, sir.

Q. Well, had you in fact discussed the retainer agreement with Mr. Bromley? A. No, I had not.

This letter was drafted by my attorney and it was an unfortunate construction of words there. It implies that I had.

Q. Well, Mr. Fleming, who was your attorney at that time? A. Mr. Lee Orr.

Q. Who? A. Lee Orr.

Q. Well, did you tell the facts to Mr. Orr as you have told them here on the stand? A. Well, there was no—would you explain what you mean by the facts?

Q. Well, did you tell Mr. Orr substantially what you have testified to here at this trial here today? A. Not in this detail, no.

At that time I simply indicated that I had received these invoices from—

1074 Q. Well, did you state to Mr. Orr that you had never talked to Mr. Bromley? A. I don't know that that question ever came up, no, sir.

Q. Well, did you ask Mr. Orr to draft that letter for you? A. The request to Mr. Orr was: What should I tell an attorney to indicate to him I don't intend to use his services?

Q. Well, you asked Mr. Orr how he terminated a lawyer's services, is that right, and Mr. Orr then drafted that letter for you? A. Yes, he said tell him that you decided not to use him or words to that effect.

Q. Did he tell you what to say or did he draft the letter? A. He dictated the phrasing which says: We have decided not to use your services as we had anticipated.

Q. Did you read the letter? A. Well, I signed it. I have to assume I read it.

Q. Did you in fact sign it? A. Yes, sir.

Q. Now, this took place, did it not, Mr. Fleming, after Mr. Baker had received a lot of publicity in the press, isn't that so? A. That is true.

1075 Q. That publicity took place just approximately a week or so before that letter was sent, is that correct?

A. Yes, sir, that is approximately—

Q. That is when you went to Mr. Orr? A. That is correct.

Q. And that is when he drafted that letter? A. That is true.

Q. It was sent, I believe, on October 1, 1963? A. Yes, sir.

Q. As I understand your testimony, in summary form, you paid no money whatsoever to Mr. Bromley. A. That is correct.

Q. In 1963. A. Or any other time.

Q. Or at any other time.

And you paid no money whatsoever to Mr. Baker. A. That is correct.

Q. At any time. A. That is correct.

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1076 Whereupon

Robert P. Martinelli

was called as a witness by the Government and having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, will you please state your name. A. Robert P. Martinelli.

Q. Would you please spell your last name. A. Yes.

M like in Mary, a-r-t-i-n-e-l-l-i.

Q. Where do you reside, Mr. Martinelli? A. In San Rafael, California.

Q. What is your business or occupation? A. I am an attorney at law.

Q. For how many years have you been an attorney at law? A. Fifteen or 16 years.

Q. What is the name of the firm that you are associated with? A. Bagshaw, B-a-g-s-h-a-w, Martinelli, Weiss-
1077 sich, W-e-i-s-s-i-c-h, and Jordan, J-o-r-d-a-n.

Q. What is their address? A. 1010 B Street, just the letter "B". San Rafael.

Q. Now, directing your attention, Mr. Martinelli, to 1962, did there come a time when you represented some organizers for a national bank charter? A. Yes, there did.

Q. Who was the principal organizer of that particular bank? A. Mr. Sherman Leland, Jr.

Q. Now in connection with that, do you know when that national bank charter application was filed? A. Yes. It was filed between June 20 and June 22, 1962.

Q. Would you please state to the Court and jury to the best of your knowledge when the approval for the bank charter was given. A. The approval was given—

Q. I appreciate there were two approvals, one temporary and one permanent, so please give both dates to the best of your recollection. A. All right.

The tentative approval was by a telegram from
1078 Mr. Saxon, the Comptroller of the Currency, office,
Mr. Saxon's office.

That was on September 17, 1962. That was a preliminary approval, in effect notice to proceed.

The official charter was on January 4 or 5th, 1963. The bank opened on January 5, a Saturday.

Q. Now in connection with that particular bank charter, what was the original name submitted by the organizers to the Comptroller of the Currency's office? A. Marin, M-a-r-i-n, Marin National Bank.

Q. Now, after the bank charter had been granted, was the name of the bank changed? A. Yes, between the initial approval and the final charter, the bank name was changed.

Q. Changed to what name? A. Redwood National Bank.

Q. In connection, Mr. Martinelli, with the Redwood National Bank charter, did you at any time send any money, in connection with this particular charter, for services rendered? A. Yes, I did.

Q. I now show you Government Exhibits 153 and 154,
marked for identification and ask you if you would
1079 please identify them.

(Government's Exhibits Nos. 153 and 154 marked for identification.)

A. Yes, I can identify both.

Q. Would you please identify them one by one, by exhibit number. A. Exhibit 153 is an onion copy, I guess you call it, on our office letterhead—and I might note that at that time there was a—the name has changed since by the deletion of one partner—March 7, 1963, letter from me to Mr. Maurice Hughett—

Q. Would you spell the last name. A. H-u-g-h-e-t-t, in Washington, D. C.

And this was a cover letter enclosing a check which is Exhibit No. 154.

This is a check, one of my own checks, my check No. 131, drawn on my account at Redwood National Bank, signed by me and payable to Wayne L. Bromley for \$5,000.

Q. Are both those records your business records? A. Yes, they are, sir.

* * * * *

1082 Whereupon

Maurice G. Hughett

was called as a witness by the Government and having been duly sworn was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your name? A. Maurice G. Hughett.

Q. Would you spell the last name? A. H-u-g-h-e-t-t.

Q. Where do you reside, Mr. Hughett? A. Fairfax, Virginia.

Q. What is your present business or occupation? A. Aircraft refueling business. I am president of the 1083 company.

Q. Now, Mr. Hughett, directing your attention, sir, to August of 1962, did you have a conversation with Sherman Leland, Jr.? A. Yes.

Q. Where did this conversation take place? A. In my office on K Street in Washington.

Q. Now, Sherman Leland, Jr., is he related to you? A. My nephew.

Q. Your nephew.

Were you aware at that time that a bank that Mr. Leland was the principal organizer of had an application pending with the Comptroller of the Currency? A. Yes.

Q. Now, you can't testify to that conversation.

But after that conversation that you had with Sherman Leland, Jr., what, if anything, did you do? A. I called Mr. Wayne Bromley.

Q. To the best of your recollection, did that take place also sometime in August, 1962? A. To the best of my recollection.

Q. Now, in subsequent months did you have other 1084 conversations with Mr. Bromley? A. Yes, I am sure I did.

Q. In connection with your original conversation with Mr. Leland? A. Yes.

Q. Now directing your attention to March of 1963, did you receive a letter and a check from Mr. Martinelli? A. Yes.

Q. I now show you Government Exhibits 153 and 154 for identification.

With respect to Government Exhibit 153 I ask you if it is the best of your recollection, did you receive the original of this copy? A. Yes—

Q. In the mail? A. Yes, I did.

Q. To the best of your knowledge was Government Exhibit 154, the \$5,000 check made payable to Wayne L. Bromley, was that enclosed with that original letter? A. Yes.

Q. Were there any endorsements on the back of Government Exhibit 154 at the time that you received it? A. No.

Q. Now when you received Government Exhibit 1085 154 marked for identification, what if anything, did you do? A. I called Mr. Bromley.

Q. And after you called Mr. Bromley, what, if anything, did you do? A. I told Mr. Bromley—

Q. No, you cannot testify Mr. Hughett, under the rules of evidence— A. I took the check to Mr. Baker's office.

Q. What, if anything, did you do with that check when you went to Baker's office? A. I left it there for Mr. Bromley.

Q. Did you give it to anyone? Do you have any recollection? A. I gave it to Mr. Baker in an envelope.

Q. I see.

Mr. Bittman: No further questions, Your Honor.

Cross-Examination

By Mr. Williams:

Q. Was Mr. Bromley up on Capitol Hill that day, sir?

A. As far as I know. I didn't see him.

Q. Did you know where he spent his time in connection with his employment at this particular time? A. Yes.

1086 Q. Where was that? A. A lot of the time in Mr. Baker's office and on Capitol Hill.

Q. What was his occupation at that time, Mr. Hughett?

A. He worked for the—I believe National Coal Policy Conference or Board.

Q. Did he have representative duties with respect to legislative functions for them? A. As far as I know, that was my understanding.

Q. Was he a lobbyist for the National Coal Policy Commission? A. To the best of my knowledge. I was not well aware of it.

Q. But you took the check and you left it up at Mr. Baker's office for Mr. Bromley? A. Yes, I did.

Q. That was the day that you received it or the day after you received it? A. I don't remember if it was the same day or not, sir.

Q. But in any event it was shortly after it was— A. Yes.

Q. —mailed to you? A. Yes, sir.

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1212 Whereupon

Charles A. Wellman

was called as a witness on behalf of the government and, having been first duly sworn, was examined by counsel and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Would you state your name please? A. Charles A. Wellman.

Q. Would you spell the last name? A. W-e-l-l-m-a-n.

Q. Where do you reside, Mr. Wellman? A. At 68 Fremont Place, in Los Angeles, California.

Q. What is your present business or occupation, please? A. I am president of Equitable Savings and Loan Association.

Q. Directing your attention to 1962, what was your business or occupation at that time? A. I was at that time president of First Charter Financial Corporation.

Q. What is First Charter Financial Corporation? A. It is a holding company that owns savings and loan associations.

Q. How long have you been in the savings and loan business, sir? A. Since 1940.

Q. Mr. Wellman, were you present at a conversation held in Los Angeles in the home and office of Howard Ahmanson on September 27, 1962? A. Yes, I was.

Q. Directing your attention to November 9, 1962, would you please state to the Court and to the Jury what if anything occurred on that date? A. At that date on November 9th, I picked up Mr. Baker, at the American Airlines Terminal, at the International Airport in Los Angeles.

Q. Was that the first time you had met him? A. No, sir.

Q. I see. So you knew who he was at that time? A. Yes, sir.

Q. Do you see Mr. Bittman present in the courtroom today? A. Yes.

Q. Approximately what time did you pick him up at the airport? A. Some time between eleven and eleven-thirty I believe.

Q. After you picked up Mr. Baker at the airport on November 8, 1962, what if anything did you do? A. I drove Mr. Baker to our offices.

Q. You are talking about First Charter Financial Corporation? A. Yes, sir.

Q. Where is that located? A. In Beverly Hills, California.

Q. What if anything did you do, sir, when you arrived at the offices of First Charter Financial Corporation? A. I took Mr. Baker to Meet Mr. Mark Taper the chairman of the board of First Charter Financial Corporation.

1215 I introduced Mr. Baker to Mr. Taper and I left the room.

Q. When did you next see Mr. Baker? A. Oh—approximately 15, 20, 30 minutes later, I can't recall exactly.

Q. Did Mr. Baker have anything with him at the time you picked him up at the airport? A. He had a briefcase.

Q. And when you next saw Mr. Baker after you left Mr. Taper's office, what if anything did you do? A. Mr. Taper brought Mr. Baker into my office and I asked Mr. Baker if he could have lunch with me, but he said "No"—that he had to return to the airport.

Q. Did you then take him back to the airport? A. I took him back to the airport to the same place where I had picked him up.

Q. And where was that? A. At the American Airlines Terminal at the International Airport.

Mr. Bittman: No further questions.

Cross Examination

By Mr. Williams:

1216 Q. As I understand it, in 1962 you were president of First Charter Financial Corporation—is that correct? A. Yes, sir.

Q. And you are not in that position at the moment? A. No.

Q. What is your position at the present time? A. I am president of Equitable Savings and Loan Association.

Q. In Los Angeles? A. Yes, sir.

Q. Was First Charter Financial Corporation a savings and loan association or was it a holding company, sir? A. It was a holding company.

Q. And did it hold an interest in savings and loan associations in the California area? A. Yes it held interests in savings and loan associations in California.

Q. How many? A. I believe at that time it was six.

Q. And of course, they were also stock companies, weren't they, Mr. Wellman? A. Yes.

Q. Mr. Bittman asked you whether you had been at a meeting at Mr. Howard Ahmonson's house on September 27, 1962, is that correct? A. Yes.

Q. And you had been present there? A. Yes, sir.

Q. Who was there with you, sir? A. Mr. Howard Ahmonson, Mr. Kenneth Childs, Mr. John Martin and Mr. Mark Taper.

Q. And Mr. Howard Ahmonson and Mr. Kenneth Childs were at that time connected with the Home Savings and Loan Association? A. That is correct.

Q. And Mr. John Martin was connected with Great Western Financial Corporation? A. Yes.

Q. And you and Mr. Taper were there representing First Charter? A. Yes, sir.

Q. After that meeting, as I understood your testimony Mr. Wellman, on November 9, 1962, you Mr. Well-
1218 man picked up Mr. Baker—is that correct? A. Yes, sir.

Q. Who told you to pick up Mr. Baker? A. I received a telephone call on November 8th from Mr. Glenn Troop of the United States Savings and Loan League telling me that Mr. Baker would be arriving in Los Angeles at that time that I have indicated.

Q. And wasn't that the first time, Mr. Wellman, that you heard Mr. Baker's name connected with the meeting that you had on September 27, or the events of November 9? A. On the phone call, yes.

Q. Yes, sir—this came as a surprise to you about Mr. Baker's coming out—did it not? A. Yes, sir.

Q. You had not talked to Mr. Baker on the telephone, had you? A. No, sir.

Q. You hadn't seen Mr. Baker since 1958, had you? A. Well I may have seen him in 1959 or 1960 but then only in groups of people of the savings and loan associations. I never saw him in 1962.

Q. So that the first mention of Mr. Baker's name
1219 in connection with this was in your conversation with Mr. Troop on November 8, 1962? A. That is correct.

Q. On November 9, 1962 you met Mr. Baker at the airport, is that correct? A. Yes, sir.

Q. And you drove him from the airport to the First Charter Financial Corporation offices? A. Yes, sir.

Q. They are in the Bank of America Building, are they not, sir? A. Yes, sir.

Q. Beverly-Wiltsire? A. Yes, sir.

Q. And you took him there and introduced him to Mr. Taper? A. That is correct.

Q. Mr. Taper being the principal shareholder of First Charter? A. Yes, sir.

Q. And you then excused yourself? A. Yes, sir.

Q. And Mr. Taper and Mr. Baker insofar as you knew remained in that office in conference is that correct?
1220 A. Yes, sir.

Q. For some twenty or thirty minutes? A. Yes, sir.

Q. And you drove Mr. Baker then to the airport? A. Yes, sir.

Q. Now, at no time did you discuss with Mr. Baker anything about campaign contributions, did you, Mr. Wellman? A. No, sir.

Q. Is that correct? A. That is correct.

Q. At no time did you discuss with Mr. Baker anything about the savings and loan legislation that had been pending in the Congress in 1962, on the way in from the airport or on the way out to the airport, is that correct. A. That is correct, sir.

Q. And after November 8, did you have any further conversations with Mr. Troop? A. No, sir.

Q. At any time? A. Well, I have seen Mr. Troop several times.

Q. Mr. Troop was the vice president of the United States Savings and Loan League, is that so? A. That is correct.

1221 Q. He acted as the Washington legislative representative for the United States Savings and Loan League, did he not? A. Yes.

Q. He acted in that capacity in 1962 and he acts in that capacity now insofar as you know, does he not? A. Yes, sir.

Mr. Williams: No further questions.

Redirect Examination

By Mr. Bittman:

Q. When Mr. Troop called on the telephone, Mr. Wellman, on November 8, 1962, to the best of your recollection did he state to you that Mr. Baker was going to come out to pick up the political contributions? A. He may have indicated that.

Q. Well let me refresh your memory and show you the grand jury testimony page 8381, and ask you if that refreshes your recollection? A. Yes—Mr. Troop did mention that.

Mr. Bittman: No further questions.

Recross examination

By Mr. Williams:

Q. And you, Mr. Wellman, were surprised to hear
1222 Mr. Baker mentioned in this connection, were you not? A. Yes, sir.

Q. This was despite the fact that you had been at the 27th September meeting at Howard Ahmonson's home? A. Yes, sir.

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Whereupon

Sidney Mark Taper

was called as a witness on behalf of the Government and, having been first duly sworn, was examined by counsel and testified as follows:

Direct examination

By Mr. Bittman:

Q. Would you state your name please sir? A. Sidney Mark Taper.

Q. And where do you reside, Mr. Taper? A. 816 Alpine Drive, Beverley Hills, California.

Q. What is your present business or occupation? A. Chairman of the Board of First Charter Financial Corporation.

Q. How long have you been associated with First 1223 Charter Financial Corporation? A. Since 1959 and previously when it was another company—when it was a family-owned company.

Q. Mr. Taper, directing your attention to September 27, 1962, on that date did you have occasion to have a meeting with Howard Ahmonson in the home and office of Howard Ahmonson? A. Yes.

Subsequent to that occasion and more specifically to November 9, 1962, did you have occasion to meet Mr. Robert G. Baker? A. Yes.

Q. Do you see him present in the courtroom here Mr. Taper? A. Yes—yes.

Q. Now would you tell us the circumstances with respect to your meeting Mr. Baker on November 9, 1962. A. Yes—Mr. Baker was in town. Mr. Wellman brought him to my office and I handed Mr. Baker an envelope with cash.

Q. How much cash, Mr. Taper, was in the envelope at the time that you handed it to Mr. Baker? A. Thirty three thousand, three hundred dollars.

1224 Q. And what was the principal denomination of those bills, sir? A. Hundred dollar bills.

Q. Do you recall any conversation with Mr. Baker at that time and place? A. Not particularly. I—it was a political contribution and it was a contribution for a fund—

Mr. Williams: Your Honor, I don't think this is responsive to the question.

The Court: Would you rephrase the question?

Mr. Bittman: Yes, Your Honor.

By Mr. Bittman:

Q. To the best of your recollection, Mr. Taper, what was said by you or what was said by Mr. Baker when Mr. Baker was in your office—if you can't recall the exact words I would ask, and I appreciate it occurred some time ago— A. Yes.

Q. —would you please state the conversation as you recall it. A. I would say there was just general conversation. There may have been something about ten or twelve senators would be grateful, or they—well, it was generally a very short conversation; it was very short.

Q. Mr. Taper, for what purpose were you giving 1225 to Mr. Baker at that time and place \$33,300 in cash?

A. The purpose was as a, as a political contribution towards a fund that the Savings and Loan League had proposed some time back.

Q. It was for the senators running for reelection? A. For the senators running for reelection—yes.

Mr. Bittman: Thank you—I have no further questions.

Cross examination

By Mr. Williams:

Q. At the time that you handed the money to Mr. Baker, Mr. Taper, on November 9, 1962, the election was already over, wasn't it? A. Yes.

Q. The election had been held on November 6, 1962, is that not correct? A. Yes.

Q. Now Mr. Taper, as I understand it, you were the principal shareholder and chairman of the board of the

First Charter Financial Corporation in 1962? A.
1226 Yes, sir.

Q. And do you still occupy that position, sir?
A. Yes.

Q. And you attended a meeting at Mr. Ahmonson's house on September 27, 1962? A. Yes.

Q. And Mr. Ahmonson at that time was the principal shareholder of Home Savings and Loan Association, is that not correct? A. Yes, sir.

Q. And that is the largest savings and loan association in America, is it not? A. Yes, sir.

Q. And Mr. Childs was there present—the president of that association at that time, is that correct? A. Yes.

Q. In addition to that, Mr. Martin was there present? A. Yes.

Q. The principal shareholder of Great Western Financial Corporation? A. I am not sure of that. I don't remember that. He may have been.

1227 Q. And you and Mr. Wellman were present at that meeting? A. Correct.

Q. Mr. Wellman was the president of your company? Was he not? A. Yes.

Q. Was anybody else there present? A. Not as far as I can remember.

Q. And how long did the conversation last on that occasion, sir? A. At that meeting I don't remember how long but the gist of the conversation was that the savings and loan league had suggested that the industry take its fair share of making contributions to the political campaign and it was suggested that the—that the three major associations make substantial contributions.

Q. The savings and loan league—that is the United States Savings and Loan League, is that right? A. Yes.

Q. And is your organization a member of the United States Savings and Loan League? A. Yes.

Q. And Mr. Glenn Troop is the Washington representa-

tive of the United States Savings and Loan League,
1228 is he not? A. Yes.

Q. Was Mr. Troop known to you at that time, Mr. Taper? A. Only by name. I am not active in these sorts of things.

Q. And thereafter, on November 9, 1962, you met Mr. Baker in your office at Beverly-Wiltshire, is that correct?

A. Yes.

Q. And he was introduced to you by Mr. Wellman? A. Yes.

Q. And at that time you gave him, Mr. Baker, \$33,300? A. Yes.

Q. In cash? A. Yes.

Q. Where had you obtained that cash Mr. Taper? A. My personal resources.

Q. You had not solicited this money, had you? A. No.

Q. In fact you had made no effort to solicit this
1229 money prior to the election in 1962, had you? A. No.

Q. You hadn't done anything about getting that money together until November 8, 1962, had you? A. That is correct.

Q. And that was two days after the election had taken place? A. That—well just, may I just correct that? I didn't decide at the time in September. I said I would consider whether I would make a contribution and it wasn't until the latter part of October that, after due consideration, did I advise whoever it was—and it was probably Mr. Wellman—that I would raise the funds.

Q. Did Mr. Wellman make any contribution to this \$33,300? A. Not as far as I am aware. No, not to this \$33,300. No.

Q. But he did tender to you ten thousand dollars? A. He loaned me \$10,000 because until the 8th, which is the date, the day before, I was unaware that anyone would come to collect the funds, and on the 8th when Mr. Wellman told me that somebody would be there the next morning to collect the funds, I asked Mr. Wellman if he had ten

thousand dollars available because I was short that sum.

1230 Q. And he loaned you ten thousand dollars and you gave it back to him the next day? A. As it happened, other funds came in and I didn't need the loan.

Q. So that you were about from your own personal funds— A. Right.

Q. —to give \$33,300 cash to Mr. Baker? A. Yes.

Q. You didn't cash in any checks? A. I did cash some checks—yes.

Q. You did cash checks? A. Yes, yes.

Q. How much of it did you raise by cash?

Mr. Bittman: I object Your Honor, as being immaterial and irrelevant.

The Court: I think so, Mr. Williams.

By Mr. Williams:

Q. Now outside of that \$33,300, Mr. Taper, you had made, had you not, only one other contribution that year and that was for \$250, to the Democratic Central Committee senatorial campaign? A. As far as I recall. There may have been others—in fact I think there were others.

1231 Q. That was by check, was it not? A. Some by cash.

Q. There was none in excess of \$250, though, were there? A. There may have been—there may have been.

Q. Do you recall? A. I don't recall, but there may have been.

Mr. Williams: No further questions.

Redirect examination

By Mr. Bittman:

Q. Just one question, Mr. Taper: Why did you raise this money in cash, sir? A. Well a couple of reasons: One is that I didn't want the publicity attendant upon giving any

large sums for political contributions and, two, I had understood it was going to United States Savings and Loan League who were going to distribute this to a number of Candidates in the senatorial campaign.

Q. You had made other political contributions in cash had you not, Mr. Taper? A. Yes.

Q. For the same reasons? A. For the same reasons.

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1244 Whereupon

Wayne Bromley

was called as a witness for the government and, having been duly sworn, was examined by counsel and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your name? A. My name is Wayne Bromley.

Q. Would you spell the last name? A. B R O M L E Y.

Q. And where do you reside, Mr. Bromley? A. I reside at 9108 Seven Locks Road, Bethesda, Maryland.

Q. For how many years have you resided in the metropolitan Washington area? A. Since Nineteen thirty eight.

Q. Mr. Bromley what is your present business or occupation? A. I am unemployed at the present.

Q. For how long have you been unemployed? A. Since January—this past year—1966.

Q. January of 1966?

1245 Q. What was your business or occupation immediately before you were unemployed? A. I was with the National Coal Policy Conference.

Q. What was your title with the National Coal Policy Conference? A. I was vice president in charge of government relations.

Q. Very briefly, what were your duties Mr. Bromley, as vice president in charge of government relations with the

National Coal Policy Conference? A. Well to handle the overall government relations but mainly as far as the Congress was concerned.

Q. For how many years were you with the National Coal Policy Conference? A. Approximately five years.

Q. During the period prior to the time you were employed by the National Coal Policy Conference where were you employed, sir? A. At the Senate—United States Senate.

Q. For how long were you employed by the United States Senate? A. From 1949 until early 1961.

Q. What were your duties at that time? A. The 1246 duties at the time I left were that of legislative analyst.

Q. Are you an attorney, Mr. Bromley? A. I am.

Q. What law school did you graduate from? A. American University—here in the city.

Q. When did you graduate from the American University Law School? A. Nineteen fifty five.

Q. Are you licensed to practice law in the District of Columbia? A. I am.

Q. How long have you known Mr. Robert G. Baker? A. Since approximately 1944, whenever he came from South Carolina.

Q. Do you see him present here in the courtroom? A. I do.

Q. Do you know whether or not Mr. Baker is licensed to practice law in the District of Columbia—to the best of your knowledge? A. I know he is licensed to practice in South Carolina but I do not know whether he is licensed to practice in the District or not.

1247 Q. Mr. Bromley, when you graduated from law school, did you have an office at that time? A. I didn't have an office, as such, no.

Q. Well did you pay desk rent to anyone? A. Yes, I paid desk space rent to Mr. Ernest Tucker.

Q. Where was his office? A. I had known Mr. Tucker from the Senate.

Q. Where were Mr. Tucker's offices located at that time?
A. At 2,000 P Street here in the city—P Street Northwest.

Q. After you graduated from law school did you order any stationery? A. I did.

Q. What did that stationery reflect as to your name and address? A. Well—name, attorney at law, 2000 P St. N.W.—that's about it—and the telephone number.

Q. Did you order a lot of stationery Mr. Bromley? A. I did.

Q. And where was this stationery of yours located—at what locations did you store certain portions of your
1248 stationery? A. Well, naturally I left some at Mr.

Tucker's suite of offices, at 2000 P St. and I had some in my office at the Capitol, I had some at home and I had some in Mr. Baker's office.

Q. Did you ever practice law as such after you joined the National Coal Policy Conference? A. No—not really.

Q. Directing your attention to approximately August of 1962, did you have a conversation at that time with Maurice Hewitt? A. I did.

Q. Do you recall this was face to face or a telephone conversation? A. It was, as I recall it was face to face—it was in the evening after work and I think we were having a cocktail together.

Q. After you had that face to face conversation with Mr. Hewitt what is the next thing that you did? A. Either next day or the day after I discussed with Mr. Baker my conversation that I had had with Mr. Hewitt.

Q. And what conversation Mr. Bromley did you have
1249 with Mr. Baker and where did that conversation take place? A. The conversation took place in his office there in the Capitol and I told him that Mr. Hewitt had a relative who had an interest in a bank in California that had applied for a national charter and I told him that I knew absolutely nothing about banking business or about charter procedure, and I told him that Mr. Hewitt had ad-

vised me that if I could be of any help to him there would be a fee of five thousand dollars.

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Q. After Mr. Baker was told about this conversation with Mr. Hewitt, to the best of your recollection what if anything did Mr. Baker say? A. Mr. Baker told me that he thought he could be of help to me in it and he asked me for the name of the bank—I had written the name down
1250 on an envelope or something I had in my pocket the night before and I had misplaced it as such so I didn't have the name of the bank at that time.

Q. Do you recall any further conversation at that time? A. We agreed that the fee would be split if we were able to expedite the charter.

Q. Now after you left Mr. Baker's office did you then have another conversation with Mr. Hewitt? A. I did.

Q. And after that conversation with Hewitt then did you have a conversation with Mr. Baker concerning the name of the bank? A. I did—on the second conversation I was able to give the name and the address of the bank.

Q. Now Mr. Bromley, between the time of that last conversation and September 15th did you receive a telephone call from Mr. Hewitt? A. I received two or three phone calls inquiring as to the status of the charter.

Q. And after Mr. Hewitt called you concerning the status of the charter did you in turn call Mr. Baker? A. Yes I did.

1251 Q. Would you please state to the ladies and gentlemen of the Jury and to His Honor Judge Gasch, what conversation was had during the course of that conversation? A. Well the first couple of times I inquired I was told that it was still pending with the Comptroller's Office—that the Comptroller's office was working on the application and the third time I discussed it with him I was told that the application had been tentatively approved but that the name of the bank was going to have to be changed.

Q. To the best of your recollection did the decision occur around mid-September of 1962? A. It did.

Q. Did you receive the five thousand dollar check? A. Yes.

Q. That you had previously discussed with Mr. Baker? A. I did.

Q. I will hand to you Mr. Bromley government exhibit No. 154 previously marked for identification and ask you if you can identify that exhibit? A. Yes—this is the check I received.

Q. Prior to your receipt of this check did you have any conversation with Mr. Hewitt? A. Yes, I did.

Q. And after you talked with Mr. Hewitt what if anything did you do? A. Within roughly a short period of time I went to Capitol Hill and a little bit later stopped by Mr. Baker's office.

Q. And when you stopped by Mr. Baker's office who did you see in Mr. Baker's office? A. Miss Tyler.

Q. Is that Miss Carol Tyler—Mr. Baker's secretary? A. Yes.

Q. And did anything else take place at that time? A. At that time there was an envelope there for me and I opened it and the check was there.

Q. And that is the same check that is government's exhibit No. 154 for identification? A. That is correct.

Q. What did you do with that check when you received it? A. I endorsed the check and a little bit later on I called Mr. Baker off the Senate floor and he and I walked around to the Senate Disbursing Office.

Q. At that time when you called Mr. Baker off the floor did you tell him you had the check? A. Yes—yes, I am sure I did.

Q. And then you and Mr. Baker went to the disbursing office—is that correct? A. That is right.

Q. And at that time your signature was on the back of the check? A. Yes.

Q. Does that appear to be the original endorsement to you? A. It does.

Q. Were there any other signatures on the back of that check at that time? A. No—there was not.

Q. What if anything happened at the time that you arrived at the Senate Disbursing office? A. Would you repeat that question, please?

1254 Q. Yes. What if anything happened when you and

Mr. Baker arrived at the Senate disbursing office?

A. Oh—I remained in a corridor and Mr. Baker went inside and cashed the check.

Q. And you didn't go inside with him? A. No—I did not.

Q. At the time you gave Mr. Baker the check were any other signatures on the back of the check other than your own? A. No they were not.

Q. What if anything took place when Mr. Baker left the Senate disbursing office? A. Well he came out and we walked through—walked down the corridor a few feet and there is a doorway there at the Senate Library and we walked through the door and it is an alcove at the foot of the steps that go up to the library and we then counted the money and I took twenty five hundred dollars of it and he took twenty five hundred dollars.

Q. Did you have any conversation with Mr. Baker at that time? A. I am sure we had conversation—the exact conversation I don't recall.

1255 Q. Well have you exhausted your recollection? A. Yes I have.

Q. Was there any conversation about paying taxes on this money? A. We subsequently discussed it—I don't know whether it was exactly then or not.

Q. To the best of your recollection when did you have such a conversation? A. It could have been then—it could have been shortly thereafter, but anyway around that approximate time we said that I would report the total five thousand dollars on my own income tax.

Q. This was the conversation between yourself and Mr. Baker—is that correct? A. That is correct.

• • • • •

1257 Q. What if anything else was said by Mr. Baker at that time and place Mr. Bromley?

* * * * *

The Witness: I was told that if—that I would report the total \$5,000 on my own income tax return and that I would be reimbursed for the difference in my tax with the check—the difference between the total of my gross income with the check as it differed from that gross income without the check.

Q. Mr. Bromley, you were questioned by the FBI in November of 1963 or to the best of your recollection was it about that time? A. I was.

Q. On or about that time did you have any conversation with Mr. Baker? A. I did.

1258 Q. To the best of your recollection when did this conversation take place with Mr. Baker—before or after the first time that you talked with the Federal Bureau of Investigation? A. After.

Q. And would you please state if it was a short time thereafter? A. It was the same day—it was that evening.

Q. Would you please state to His Honor and the ladies and gentlemen of the Jury what was said by Mr. Baker and what was said by yourself at that time? A. Well I informed him of the basis of my conference with the FBI agents and informed him of the points or the nature of the questioning. I told him that I had informed them that I had retained the whole five thousand dollars fee.

Q. What if anything did Mr. Baker state to you at that time? A. Well he was provoked with him for talking with them but, inasmuch as I had, he was glad I had told them what I had.

Q. Did he state anything else to you at that time if you recall? A. Well he stated that anyone that talked
1259 with them was—with the FBI—was not a friend of his.

* * * * *

1264 By Mr. Bittman:

Q. Now Mr. Bromley—directing your attention to April of 1963, sir, did you have occasion to travel to Las Vegas, Nevada? A. I did.

Q. And do you recall when you travelled to Las Vegas? A. I went out there on the 19th April to attend a testimonial dinner.

Q. And was Mr. Baker in Las Vegas on that date? A. Yes, he was.

Q. He was.

The Court: Mr. Bittman—was that 1963?

Mr. Bittman: Nineteen sixty three, yes Your Honor.

The Court: Thank you.

Mr. Bittman: Do you agree to stipulate to the date Mr. Williams?

Mr. Williams: Your Honor, we have stipulated that, so that it would not be necessary for Mr. Bittman to call a witness, that Mr. Baker was in Las Vegas,—I believe the dates were April 17-20?

1265 Mr. Bittman: Is that right?

The Witness: I believe it was 19th through 21st.

Mr. Williams: And that he stayed at the Sands Hotel during that period.

The Court: Ladies and gentlemen of the Jury: when you hear that there is a stipulation by and between counsel you may take that fact as proof.

By Mr. Bittman:

Q. Now directing your attention Mr. Bromley to Sunday, April 21, 1963, more particularly Sunday morning, would you state to the Court and the Jury what if anything happened at that time? A. I received a phone call from Mr. Clifford Jones.

Q. Now who was Mr. Clifford Jones? A. He is an attorney at law in Las Vegas and as I understand it was the owner of the Thunderbird hotel—a former Lt. Governor of Nevada.

Q. Was he also, and to your knowledge, an officer and director of First Western Financial Corporation located in Las Vegas? A. I don't know.

Q. All right. Now what, if anything, occurred when Mr. Jones called you—what did he state to you at that
1266 time and place? A. He said he would like to see me and asked if I could meet him in an office there in the hotel and I said yes.

Q. Approximately what time of morning was this? A. Nine thirty—ten o'clock.

Something like that.

Q. And you had a meeting with Mr. Jones? A. Yes.

Q. You had met with Mr. Jones prior to that time had you not? A. I had. So in about half an hour I met him—he had given me directions as to where to come—to go to meet him in an office on the mezzanine floor or the second floor—anyway it was off the lobby and there was a flight of steps and I got there and I met him at the foot of the steps.

Q. And after you met him what if anything did you and Mr. Jones do? A. We walked down the steps and went into this office there.

Q. Had you ever been in that office before? A. No—never.

1267 Q. Who else was in that office at the time if anyone? A. Mr. Baker and another gentleman were there.

Q. What if anything took place in that office? A. Mr. Jones introduced me to the other gentleman.

Q. Do you recall who that was?

Or don't you know who that was? A. I didn't know at the time.

So the four of us sat down and I naturally spoke to Mr. Baker and sat down—

Q. Keep your voice up a little. A. All right.

Q. To the best of your recollection what did Mr. Jones state to you at the time? A. Well he came right to the

point of the meeting and said that he wanted to give Mr. Baker ten thousand dollars and would like for me to consent to him sending me a check monthly in the amount of one thousand dollars each month—he said that he understood I was in the approximate thirty percent bracket—tax bracket—and that after payment to me of this ten thousand dollars that he wanted me to report it as income and that he would pay the taxes on it.

1268 Q. Do you recall any further conversations at that time Mr. Bromley? A. Well I looked at Mr. Baker and he nodded, or anyway, I was given to understand that that was what he wanted, so I told Mr. Jones if that was what everybody wanted it was O.K. with me.

He reiterated that this was for Mr. Baker and not for me; he said that perhaps later on some time there might be some service I could perform that he would—that I would be able to be paid later on on some capacity.

Q. After April 21, 1962, did you go back to Washington, D. C.? A. I did.

Q. And eventually were any invoices sent? A. At our original meeting first Mr. Jones had asked me to send him some invoices.

Q. This was in 1963? A. Yes, that's right.

Q. And after returning to Washington what happened? A. After returning to Washington a few days passed and one day Miss Tyler and I sent an invoice, or composed an invoice and sent it out to Las Vegas.

Q. Before we get into that Mr. Bromley, were
1268A you registered at the Thunderbird Hotel in Las Vegas, Nevada? A. Yes, I was.

Q. I show you Government exhibit 265 for identification and ask you if you can identify this document? A. This is the registration card that I registered.

Q. And who actually paid for your room while you were in that hotel? A. It was complimented by Mr. Jones.

Q. Mr. Clifford Jones? A. Yes.

Q. I show you government exhibit No. 157 for identifica-

tion and ask you if you can identify that for us? A. This is the original invoice that Miss Tyler and I composed.

Q. Do you know the—or did you know the address of First Western Financial or any other names at the time you had that conversation with Miss Tyler? A. No I did not.

Q. But you had knowledge that the invoice had
1269 been sent—is that correct? A. Yes, sir.

Q. Were other invoices sent? A. Yes I was informed by Miss Tyler later that we had sent this to the wrong place and was informed that another one had been sent.

Q. I see. I want to show you government exhibit No. 170 which purports to be a letter dated May 24, 1963 and ask you if you have ever seen either that copy or the original of that letter to the best of your recollection? A. I have never seen the original—I have never seen this, until it was shown to me.

Q. By whom? A. By you, to identify it if I could.

Q. I show you government exhibit No. 171 for identification and this appears to be an original letter on the stationery of the First Western Financial Corporation dated June 25, 1963 and ask you if you have ever seen that before? A. I have. I was given this by Miss Tyler and it is in essence a receipt or an acknowledgment of receiving this letter and I did sign this.

Q. I would like to show you other government ex-
1270 hibits here Mr. Bromley, which purport to be invoices on the stationery of Wayne S. Bromley, Attorney at Law, 605 Headquarters Building, 2000 P St., N.W., Washington 6, D. C., and ask you to the best of your recollection if you have ever seen these invoices prior to the time that you were shown them by me or by some representative of the government? A. Well—

Q. And would you identify each one by government exhibit number for the record, please. A. Well the first one is exhibit 158 an invoice on my stationery dated June 6, 1963

in the amount of a thousand dollars, and the second is government exhibit 159 dated July 19, 1963 in the same amount.

Q. In connection with those two invoices that you have just identified prior to the time they were shown to you by either myself or some representative of the United States government had you ever seen those prior to that? A. No I had not.

The third is exhibit 160 an invoice on my stationery dated August 9th in the amount of one thousand dollars 1270-A to the First Western Financial Corporation.

Exhibit 161—an invoice on my stationery dated June 2nd in the amount of one thousand dollars.

Q. And in connection with those two invoices you had not seen those until either myself or some representative of the United States Government showed them to you—is that correct? A. That is correct.

Government exhibit 162 invoice on my stationery, dated October 3rd—and fourth is exhibit 163 on my stationery dated 26th November 1963 and 164—my stationery, dated December 2nd 1963 in the same amount.

No. 165 is on my stationery, dated January 2nd, 1964 in the amount of a thousand dollars.

166—my stationery—dated January 30, 1964 in the amount of a thousand dollars and government exhibit 172 a letter to me from Mr. Wm. W. Francis, Administrative Vice President terminating my services.

Q. Had you ever seen that letter before the government showed it to you Mr. Bromley? A. No—I had not.

Q. Go ahead. A. Government exhibit No. 167 1270-B on my stationery invoice dated May 11, 1964—First Western in the amount of two thousand dollars.

Exhibit 168—an invoice to the First Western Financial Corporation in the amount of a thousand dollars dated twenty first of April 1964 on the stationery of the law offices of Tucker and Baker.

Government exhibit No. 169—an invoice to First Western Financial Corporation in the amount of \$1000 dated

July 6th 1966 on the stationery of Wayne Bromley, attorney at law, suite 309 - 1730 K St., N.W.

Q. Had you ever seen that blank stationery before in your life prior to the government showing it to you—referring now to the stationery which says “Attorney at Law, suite 309, 1730 K St.”—had you ever seen that stationery to the best of your recollection prior to the time that the government showed it to you? A. No—I had not.

Q. Did you even know it existed? A. No—I didn’t.

Q. Mr. Bromley, with the exception of the first invoice had you ever seen any of the invoices which you have just identified prior to the time that a representative 1270-C of the government showed it to you? A. No—I had not.

Mr. Bittman: Your Honor, at this time I would like to withdraw Mr. Bromley pursuant to our earlier conference and put on the witness who has just arrived, with the Court’s permission?

The Court: Would you step down, sir.

(Whereupon the witness was temporarily excused)

Whereupon

Luther Hodges

was called as a witness for the government and, having been first duly sworn, was examined by counsel and testified as follows:

Direct Examination

By Mr. Hansen:

Q. Sir would you state your name for the reporter? A. Luther H. Hodges.

Q. Where do you live, sir? A. Chapel Hill, North Carolina.

Q. And what is your present business or occupation? A. I am chairman of the board of Research Triangle Foundation—North Carolina.

1270-D Q. Directing your attention to the year 1961 what was your occupation that year? A. I was Secretary of Commerce for the United States.

Q. And did you know the defendant Robert G. Baker? A. Yes.

Q. During the year 1961 did you have any business dealings with him? A. Yes.

Q. During the year 1961 did Mr. Baker pay you \$913.00 in interest? A. No, sir.

Q. Did he pay you any amount of interest in 1961? A. No, sir.

Q. Sir, did he owe you any interest in 1961? A. No.

Mr. Hansen: I have no further questions.

Cross Examination

By Mr. Williams:

Q. For the record, Governor Hodges, were you in a business transaction with Mr. Baker in 1961? A. Yes, sir.

1270-E Q. Would you tell His Honor and the Jury what that transaction was? A. I sold to Mr. Baker and Mr. Jones the stock that I owned in a certain hotel-restaurant in Charlotte, North Carolina.

Q. Is it not a fact, Governor, that you and Mr. Baker and Mr. Jones were associated in the ownership and operation of a Howard Johnson motor lodge? A. Yes sir—we had a one third interest.

Q. And that motor lodge existed in Charlotte, North Carolina, did it not? A. Right.

Q. And there came a time did there not, Governor, when by virtue of your appointment to the Cabinet in 1961 that you moved up to Washington and wanted to sever your relationship with that venture? A. That's right sir.

Q. Because you had in fact moved to Washington to serve as Secretary of Commerce, is that not correct? A. Yes, sir.

Q. Now at that time you sold your interest in this venture

to Mr. Seby Jones and Mr. Baker did you not? A. Correct.

1270-F Q. And they took over your total interest in this venture? A. Correct.

Q. And do you recall, Governor Hodges, that when you turned over your interest in this venture to Jones and to Baker you said that as part of the agreement you wanted to get back six per cent interest on the money that you had advanced for this venture? A. What I said in a letter, first a telephone conversation and a letter was that I wanted to get exactly what I had put into it—I did not want to make any money on it but that figure was a base figure, plus whatever my money cost me, but when we closed the deal we closed it at a very specific total sales price of fifty eight thousand seven hundred and some dollars.

Q. All right—thank you.

Mr. Williams: I would like the Clerk to mark this as defendant's exhibit 6 for identification.

(Whereupon the document referred to was marked as defendant's exhibit No. 6 for identification)

Q. I hand to you defendant's exhibit 6 for identification and ask you if this is a letter which you wrote to 1270-G Mr. Baker? A. Yes.

Q. When you wrote that letter Governor that was June 26, 1961—is that correct? A. That is right.

Q. And you annexed to that letter dated June 26, 1961 which had been addressed to both Mr. Baker and Mr. Jones—is that right? A. That's right.

Q. Purportedly setting out your arrangement with them, is that correct? A. Yes.

Q. And I want to call your attention to this language here, if I may, Governor:

"This confirms the agreement by telephone Saturday June 23, 1961, when SB"

his initials were S. B. is that right? A. Yes.

Q. "S. B. Jones, of Raleigh, North Carolina for Messrs.

Jones and Robert G. Baker, took over the holdings, stocks and notes which I have in the Charlotte Enterprises, Inc."

that was the name of the company—Charlotte Enterprises, Inc.

"and Mecklenberg Enterprises, Inc., for the sum of \$56,430.00—for the exact amount I have paid in. If this figure is not exact—"

1270-H A. Yes.

Q. "interest on amounts paid in will be at the rate of six per cent from the date of my deposits with the above corporation."

Is that your language? A. Yes.

Q. Well does that refresh your recollection that you did want to get a six per cent return on your investment from the date you advanced the money for this venture? A. Yes, to a total figure—we put in three different payments for the purpose of this originally before these other transactions—this other transaction, and we figured the interest for each of the deposits we made, and then came to a total which was agreed on later as a sales price.

Q. Yes, sir—in other words, when you made the deal with Mr. Baker, you in effect took the position that since you were getting out, you didn't want to make a profit from your partners, Mr. Jones and Mr. Baker, but at the same time you wanted to not have to take a loss? A. That's correct.

Q. And you wanted to reap some little return on the moneys you had been investing in this venture for 1270-I this year and a half—is that correct? A. That is correct.

Q. And in fact six per cent on the moneys would have amounted to \$1,826.24—is that right? A. That is roughly right.

Q. And half of that would have been \$913.12—and Baker was a one half owner, was he not, when you left? A. Yes—

I sold it to Baker and Jones and I presumed they would have half each at that time.

Q. So that when you were paid under the terms of your arrangement Baker would have had to assume half of that \$1,826.24 would he not? A. He would have to assume half of the total amount—yes.

Q. The total amount? A. Of the fifty eight thousand dollars—if you add that in—you had fifty eight which was the figure which was finally agreed upon, and confirmed by Mr. Baker's lawyer and Mr. Jones' lawyer to my lawyer.

Q. Well what you did is to take the fifty six thousand and then add on this six per cent? A. Fifty eight thousand seven hundred—that's right—that is the total.

1270-J Q. And each of them paid—what—fifty percent of that amount? A. Either directly or indirectly.

Q. Either directly or indirectly? A. Yes—the first check came from Mr. Jones, I believe.

Redirect Examination

By Mr. Hansen:

Q. Over a period of how many years was this obligation paid to you, Governor? A. It was sold in 1961, sir, and there was a cash payment of \$20,000 I believe, and then the next two years was on that basis—1961, 1962, 1963.

Recross Examination

By Mr. Williams:

Q. Well if the balance of the indebtedness was over two more years, there was another rate of interest of five per cent—is that not so? A. Yes.

Redirect Examination

By Mr. Hansen:

Q. Mr. Williams said that there was another interest rate of five percent—that was the only interest rate was
1270-K it not, Governor—the five per cent? A. It was the only interest rate that would be charged to

Messrs. Jones and Baker—we had no mention that they had to pay interest on the first instalment.

Q. Yes. A. It was the last two instalments on which we required interest to be paid—deferred payments. The other was the total sales price of \$58,000 which we reported in our income tax with the advice of the tax counsel.

Q. And the five per cent interest rate was on the total?
A. On the remaining amount to be paid in the future two years—1962 and 1963.

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1302 Direct Examination (resumed)

By Mr. Bittman:

Q. You are the same Wayne Bromley who testified this morning in this case, are you not, sir? A. Yes, I am.

Q. I believe at the conclusion of this morning's session, Mr. Bromley, you looked at some invoices that I had showed you, is that correct? A. Yes, sir.

Q. Now, during the same period of time that those invoices were dated, did you receive checks, First Western Financial Corporation? A. Yes, I did.

Q. And would you please state to his Honor, Judge Gasch, and the ladies and gentlemen of the jury, where you received these checks and from whom to the best of your recollection. A. Well, there would be no set pattern. I would receive them mainly from Mr. Baker. Occasionally his secretary would give me a check.

1303 Q. Referring to Carol Tyler? A. Yes.

Q. Did you ever receive any checks from anyone other than Carol Tyler and Robert G. Baker?

That is, First Western Financial checks? A. Yes. I believe on one occasion I received a call from the secretary of a friend of mine that said there was a check there.

Q. A First Western Financial check? A. I believe so.

Q. I now show you Government Exhibits and ask if you can identify them and would you please state what they purport to be, if you can. A. Identify each one?

Q. Yes, start with the exhibit number. A. Exhibit number 173, a check from the First Western Financial Corporation, to me, dated May 21—in the amount of \$1,000.

Q. 1963? A. Yes, 1963.

Q. Continue. A. It has my endorsement on the back.

Q. What, if anything, did you do with that check to the best of your knowledge? A. I cashed it and gave
1304 the proceeds of it, or the cash to Mr. Baker.

Exhibit 174, the First Western check made out to me in the sum of \$1,000 dated June 25, 1963 with my endorsement on the back of it.

I cashed this check and gave the money to Mr. Baker.

Exhibit No. 175, a First Western check dated July 30, 1963, made out to me, in the sum of \$1,000, with my endorsement on the back.

I gave the proceeds of this to Mr. Baker.

The Court: What is the date of that, sir?

The Witness: July 30, your Honor.

The Court: Thank you.

The Witness: 176, a First Western check made out to me, in the amount of \$1,000 dated August 28, 1963, with my endorsement on the back.

I gave the proceeds of this to Mr. Baker.

Exhibit 177, a First Western check in the amount of \$1,000, made out to me, dated September 13, 1963. My endorsement is on the back. I gave the proceeds of this to Mr. Baker.

Exhibit 178, a First Western check dated October 15, 1963, a check made out to me in the amount of \$1,000. My endorsement is on the back.

I gave the proceeds of this to Mr. Baker.

Exhibit 179, a First Western Check in the amount
1305 of \$1,000 made payable to me, dated December 6, 1963, and my endorsement is on the back. I gave the proceeds to Mr. Baker.

Exhibit 180, a First Western check in the amount of \$1,000, made out to me, dated December 23, 1963, with my

endorsement on the back. I gave the proceeds of this to Mr. Baker.

Exhibit 181, a First Western check, dated January 14, 1964, a check made out to me in the sum of \$1,000.

My endorsement is on the back. I think I borrowed this \$1,000 from him. So I did not give it to him. I kept this \$1,000 as a loan from Mr. Baker to myself.

Exhibit 182, a First Western check dated February 7, 1964, in the amount of \$1,000, made out to me with my endorsement. I gave the proceeds of this to Mr. Baker.

Exhibit 183, a First Western check dated June 3, 1964, in the amount of \$3,000, made out to me with my endorsement. I gave the proceeds to Mr. Baker.

Exhibit 184, a First Western check dated July 14, 1964 in the amount of \$1,000 made out to me, with my endorsement.

I gave the proceeds of that check to Mr. Baker.

Q. Now, to the best of your knowledge, Mr. 1306 Bromley, were these checks sent to 2000 P Street?

A. Yes, that is correct.

Q. I now show you Government exhibits 185 and 186 marked for identification, purporting to be Form 1099's of the U. S. Treasury Department, and ask you if you have ever seen those before? A. No, I never saw them until they were showed to me by yourself.

Q. Thank you.

Now, Mr. Bromley, did you ever perform any services whatsoever for First Western Financial Corporation located in Las Vegas, Nevada? A. I did not.

Q. Did you ever perform any services whatsoever for Clifford Jones of Las Vegas, Nevada? A. No, sir.

Q. Now, directing your attention, Mr. Bromley, to approximately early August of 1963, would you please state to the Court and to the jury what, if anything, took place at that time? A. I had a conversation with Mr. Baker in his office at the Capitol. He informed me that Mr. Morris Forgash was going to start sending me a check for \$500 every month.

1307 Q. Did he say anything further at that time? A. He said it would be handled as the First Western checks had been.

Q. Yes. I now show you certain exhibits marked for identification, Mr. Bromley, and ask you to please go over these one by one and identify them if you can, sir. A. Exhibit 188, a letter on my stationery, to Mr. Morris Forgash, President of United States Freight Company, confirming our contract. It is dated August 1, 1963.

Q. Does your signature appear thereon, Mr. Bromley? A. The signature of Wayne Bromley is on here. It is not mine, the signature, though.

Q. Did you ever authorize anyone to sign your name to any correspondence between United States Freight Co. and yourself, Mr. Bromley? A. No, I did not.

Q. Have you ever seen that letter, Government Exhibit No. 188, prior to the time that either myself or a government representative showed it to you? A. No, I did not.

Q. Proceed. A. Exhibit 189, an invoice on my stationery dated August 1, in the amount of \$500 to Mr. Forgash.

Q. Would you please state to the jury whether or
1308 not—as you go through each one of these exhibits, whether or not you had seen them before, or not, indicating whether the Government showed them to you or whether or not you had ever seen them from anyone else. A. No, I had not seen this one.

Exhibit 191, a letter from the United States Freight Company dated August 5, 1963 to me, 2000 P Street.

It is a letter from Mr. Forgash confirming our arrangement that I would receive a retainer of \$500 a month.

It does have my signature on it. I was given this letter by Miss Tyler to sign at the time it came in.

Q. All right. A. A letter on my stationery—

Q. The exhibit number? A. Exhibit No. 190.

I am sorry.

This is a letter to Mr. Forgash, dated August 21, 1963, including the letter I just identified. This is not my signature.

It is a copy of a letter dated October 11.

Q. Start with the Exhibit number. A. Exhibit 194. A copy of a letter dated October 11, 1963 to me, apparently enclosing some material to be looked over, saying 1309 that he would be in town the next week and he would appreciate it if we could get together.

There is no signature on this copy. The initials on the lower left are "M.F./"B".

I never received the original of this and never saw the copy until you showed it to me.

Exhibit 95, a letter dated November 11, 1963 to Mr. Forgash.

It is a business letter but it is not my signature.

Q. Well, there is a signature there that says Wayne L. Bromley, right? A. Yes, there is.

Q. But you did not sign this, is that correct? A. No, I did not.

Exhibit 196, a letter dated April 1, 1964, to Mr. Forgash. It is a business letter with a signature on it which is not mine.

Q. Does that signature also purport to be the signature of Wayne L. Bromley? A. Yes.

Q. But it is not your signature, is that correct? A. No, it is not.

Exhibit 197, a letter dated April 2, 1964. A copy of a letter to me saying that someone would like to meet 1310 with me the next week when they were in town.

But there is no signature on it at all.

Q. Do you recall ever seeing the original of that letter before, or the copy, Mr. Bromley, until I showed it to you? A. No, I did not.

Q. No, have you ever seen an invoice addressed from Wayne L. Bromley to United States Freight Company prior to the time the Government showed it to you? A. No, I did not.

Q. Then we can go through these very quickly if you did not.

Government Exhibit 199 is such an invoice? A. Yes.

Q. Exhibit 200? A. Yes.

Q. 201? A. Yes.

Q. 202? A. Yes.

Q. 203? A. Yes.

Q. 204? A. Yes.

1311 Q. 205? A. Yes, sir.

Q. 206? A. It is.

Q. 207? A. Yes, sir.

Q. 208? A. Yes, sir.

Q. 209? A. Yes.

Q. 210 also 211, those are all invoices which you had never seen before until the Government showed them to you, right? A. Yes.

Q. During this period of time commencing August of 1963 and continuing forward, did you also receive from Mr. Baker or Miss Carol Tyler United States Freight checks in the amount of \$500 payable to you? A. I did.

Q. Would you identify the exhibit number and go through those checks? A. Exhibit No. 212, U.S. Freight check dated August 15, made out to me in the amount of \$500.

I cashed this check and gave the money to Mr. Baker.

1312 Exhibit 213, a U.S. Freight check dated September 3, 1963 in the amount of \$500, made payable to me.

I endorsed that check, cashed it and gave the proceeds to Mr. Baker.

Exhibit 214, a U.S. Freight check dated October 1, 1963, in the amount of \$500, made out to me. I cashed this check and to the best of my recollection I borrowed the \$500 from Mr. Baker.

Exhibit 215, a U.S. Freight Check dated November 1, 1963 in the amount of \$500 made payable to me. I endorsed this check and gave the proceeds to Mr. Baker.

Exhibit 216, a U.S. Freight check dated December 19, 1963, in the amount of \$500 made payable to me. I cashed this check and gave the proceeds to Mr. Baker.

Exhibit 217, U.S. Freight check dated January 2, 1964, in the amount of \$500, made payable to me.

I cashed this check and borrowed the same \$500 from Mr. Baker.

Exhibit 218, a U.S. Freight check dated February 3, 1964, in the amount of \$500 made payable to me.

I cashed this check and gave the proceeds to Mr. Baker.

Exhibit 219, U.S. Freight check dated March 2, 1964 in the amount of \$500 made payable to me.

1313 I cashed the check and gave the proceeds to Mr. Baker.

Exhibit 220, U.S. Freight check dated April 1, 1964, in the amount of \$500 made payable to me. I cashed it and gave the proceeds to Mr. Baker.

Exhibit 221, U.S. Freight check dated May 1, 1964 in the amount of \$500 made payable to me. I cashed this check and gave to Mr. Baker the proceeds.

Exhibit 222, U.S. Freight check dated June 1, 1964 in the amount of \$500, made payable to me.

I cashed this check and gave the proceeds to Mr. Baker.

Exhibit 223, a U.S. Freight check dated July 1, 1964, in the amount of \$500 made payable to me. This was cashed by someone other than myself.

Q. Now, directing your attention, Mr. Bromley, to the middle of 1964, do you recall having a conversation with Mr. Baker during that approximate period of time? A. Yes.

Q. Where was this—to the best of your recollection? A. I just do not remember exactly where it was. But I told Mr. Baker that, because of the investigations that were in process, and the notoriety that was being gained by the so-called "Baker case," I would like for the
1314 checks coming to me to stop.

He agreed to stop them and, of course, I realized they could not be stopped immediately or overnight. But I wanted them stopped.

Q. To the best of your recollection, did you have that conversation prior to July 1, 1964, as set forth in Government Exhibit No. 223? A. As I recall it, that conversation took place in April or May, 1964.

Q. Now, is the endorsement, "Wayne L. Bromley" on the back of Government Exhibit 223 for identification, is that your endorsement? A. No, it is not.

Q. Proceed. A. Exhibit 224, a U.S. Freight check dated August 1, 1964 in the amount of \$500 made payable to me. It is not my endorsement.

Q. Well, is it signed "Wayne L. Bromley"? A. Yes, it is signed "Wayne L. Bromley."

Q. But you did not sign it? A. No, I did not.

Exhibit 225, U.S. Freight check dated September 1, 1964 in the amount of \$500 made payable to me, with the signature "Wayne L. Bromley" on the back. I did not sign this one.

1315 Exhibit No. 226, U.S. Freight check dated October 1, 1964, in the amount of \$500, made payable to me.

The name "Wayne L. Bromley" appears on the back but but it is not my signature.

Q. I now show you, Mr. Bromley, Government exhibit 227 and 228 for identification which purport to be Form 1099 of the United States Treasury Department for the years 1963 and 1964, and ask you, sir, whether or not you have ever seen those before. A. I never saw these prior to your showing them to me.

Q. I now show you Government exhibits 274, 275 and 276 and ask you to identify these if you can, sir.

Before you get into that, Mr. Bromley, let me ask you one or two short questions.

Did you ever perform any services of any nature whatsoever for the United States Freight Company located in New York City? A. No, I did not.

Q. Did you ever perform any services whatsoever for Morris Forgash? A. No, sir.

Q. Now, would you please identify, if you can, those three exhibits that I have just handed to you. A. Yes.

274 is an invoice on my stationery made out to 1316 Mr. David Fleming, President, International Marketing Associates, Inc., in the amount of \$500, dated July 30, 1963.

Q. Do you know anything about that invoice? A. I do not. I never saw it before.

Q. Have you ever met Mr. Fleming? A. Not to my knowledge.

Exhibit 275, on my stationery, dated September 2, 1963. An invoice to Mr. Fleming in the amount of \$500.

Q. Have you ever seen that before? A. No, sir.

Q. Proceed.

Exhibit 276, a letter dated 1 October 1963, a letter addressed to me from Mr. Fleming, terminating my services.

Q. Did you ever perform any services on behalf of International Marketing or Mr. Fleming, Mr. Bromley? A. No, I did not.

Q. I now hand you, Mr. Bromley, Government Exhibit No. 248, previously marked for identification and ask you to examine that, sir.

To the best of your recollection did you have a conversation with Mr. Baker concerning that exhibit? A. I did.

1317 Q. What is the exhibit? A. That is Exhibit 248.

It is a check in the amount of \$1,000 dated February 11, 1964, made payable to me, from the Harvey Aluminum Sales, Inc.

Q. What conversation did you have with Mr. Baker concerning that check, to the best of your recollection? A. I received a phone call from Mr. Baker and I met with him and he gave me this check that he wanted me to cash. I went to the—

Q. What, if anything, did you say to him when he handed you that check? A. I said something like, "What is this, another one?" He said, "Yes."

So, we went to the National Capital Bank and I cashed it and gave him the proceeds.

Q. Now, did you ever see any invoices, Mr. Bromley, in connection with your invoices or purportedly your invoices addressed to Harvey Aluminum or Harvey Aluminum Sales? A. No, I have never seen them.

Q. Government exhibit 230 for identification, 231, 232, 233, 234, 235, 236, 237, 238, 239. To the best of your recollection, you have never seen any of those invoices until either myself or someone in the Government 1318 showed them to you, right? A. Until just now.

Q. I ask you to identify the next group of exhibits which I put before you. A. Exhibit 249, is a check from Harvey Aluminum in the amount of \$1,000 dated March 19, 1964, made payable to me.

I cashed this check and gave the proceeds to Mr. Baker.

No. 250, a Harvey Aluminum check in the amount of \$1,000 dated April 9, 1964, made payable to me. I cashed this check and gave the proceeds to Mr. Baker.

Exhibit 251, Harvey Aluminum check dated May 21, 1964, in the amount of \$1,000. I cashed this check and gave the proceeds to Mr. Baker.

Exhibit No. 252, a Harvey Aluminum check in the amount of \$1,000 dated July 9, 1964, made payable to me.

I cashed this check and gave the proceeds to Mr. Baker.

Exhibit 253, a Harvey Aluminum check in the amount of \$1,000 dated August 6, 1964, made payable to me. I cashed this check and gave the proceeds to Mr. Baker.

Exhibit 254, a Harvey Aluminum check in the amount of \$1,000 dated August 27, 1964, payable to me, the 1319-38 name Wayne L. Bromley appears thereon. But it is not my endorsement.

Exhibit No. 255, a Harvey Aluminum check in the amount of \$1,000 dated October 8, 1964 and made payable to me. My name appears on the back, but it is not my endorsement.

Exhibit 256, a Harvey Aluminum check in the amount of \$1,000, dated November 5, 1964.

Q. Mr. Bromley, immediately prior to your receiving that check, Government exhibit 256 for identification, did you have a conversation with Mr. Baker? A. I did.

Q. And approximately when was that conversation? A. This was in November of 1964.

• • • • •
1338 Q. Concerning that check, Mr. Bromley, that you have just identified, will you please state to the Court and the jury what conversations you had with Mr. Baker immediately before you received that check? A. I told Mr. Baker I wanted to borrow a thousand dollars—well, I wanted to borrow some money. He asked me how much and I said a thousand dollars. And he gave me this check. That had been made out to me by the Harvey Aluminum Company.

Q. And what, if anything, did you say to him when he gave you that check? A. I told him I understood that these had stopped coming in. And he said that he was stopping it. But it took time, and that it had not stopped as yet.

Q. Did you then cash that check, and you kept the proceeds—is that correct? A. Yes. That is right.

Q. As a loan? A. Yes, as a loan. Exhibit 257, Harvey Aluminum check in the amount of \$1,000, dated November 25, 1964, check made out to me, my name appears on the back but it is not my endorsement.

Q. I direct your attention to the next two exhibits
1339 which again purport to be Form 1099 of the United States Treasury Department, Government Exhibit 258 and 259, and ask you if you have ever seen those before? A. I have never seen them before.

• • • • •

1346 By Mr. Bittman:

Q. Mr. Bromley, did you file an income tax return for the year 1963? A. Yes, I did.

Q. And when was that return prepared? A. In December of 1964.

Q. Did anyone aid and assist you in the preparation of this return? A. Yes.

Q. Who? A. Mr. Baker did.

Q. Did you make any efforts to get together with Mr. Baker prior to December of 1964 in order to prepare your 1963 tax return? A. Yes, we both applied for extensions prior to the April 15 due date, but he had to consult with his—had to work his out. And I frankly did not know what mine consisted of—so it drug on until December.

Q. Why didn't you file your '63 tax return before December, 1964? A. Because I did not know how much money to put down.

Q. Referring to United States Freight, and First Financial? A. Yes, I had kept no records of the checks I
1347 had cashed and I wanted to—I had to have that amount before I could file my taxes.

Q. Directing your attention to late 1964, did you have a conversation with Mr. Baker concerning your 1963 tax return? A. I did.

Q. And where did this conversation take place? A. Well, you did say December '64?

Q. Well, did you have a conversation before December '64 concerning this matter? A. Not any real conversation. We periodically—either I would say to him or he would say to me we had to get on it, but never any real conversation as such. Never going into any detail as such.

There came a time in December when we finally did sit down to work on it. It was around the 27th of December or something like that. But I did want to get it in before the year was completely gone.

Q. Did you have such a meeting with Mr. Baker? A. I did.

Q. Where did this meeting take place? A. At his home.

Q. Had you tried the day before unsuccessfully to reach Mr. Baker to accomplish it? A. The day before we had planned to get together but there was a football
1348 game on television and we just did not get together.

Q. What time of the day did you eventually get together the following day? A. Six o'clock in the morning.

Q. You arrived at Mr. Baker's home, is that correct? A. Yes. That is correct.

Q. Where was his home located? A. On Van Ness Street.

Q. Where is that? A. Here in town. Van Ness Street, Northwest.

Q. That is in Spring Valley? A. Yes.

Q. Was Mr. Baker up? Why don't you state, Mr. Bromley, what if anything happened when you rang the doorbell approximately six A. M. in the morning. A. Well, after a while someone opened the door and Mr. Baker was still in bed so they went up and awakened him, and in a relatively short period of time he came downstairs and we went into—I guess you would call it a family room. We went into a room in his house and we talked for a few minutes, to give him time to—you know—to get awake, and then we started working on the taxes.

Q. Did you have any conversations at that time about Mr. Baker's taxes? A. Yes. He said that he had
1349 not filed his, and he had reported the First Western and the United States Freight checks on his own return.

Q. What else did he say, if anything? A. He said that he had been advised by his tax attorney that the way to handle it was to list those amounts on my return as gross income, but to deduct them on the Schedule C.

Q. Now referring to what, if anything, did he say about his own taxes, if you can recall? A. Well, he just said that he had paid them and that he had reported those amounts as income.

Q. Have you exhausted your recollection along those lines? A. I have.

Q. Was there any mention about interest or losses? A. Oh, he stated that after his tax consultant or his tax attorney or someone had worked out his taxes, it appeared that because of the large amount of interest payments that he had made, because of certain loans that he had outstanding, that by deducting this interest it would—rather he would be better—rather it would be easier for him to absorb those amounts than for me to.

Q. That is why he put them on his tax return, is it not? A. Yes. That is correct.

Mr. Williams: I object to the last question, and 1350 ask it—that it be stricken. First of all, it was leading. Secondly, it was a conclusion of the examiner.

The Court: The question and answer will go out. The jury is instructed to disregard it.

By Mr. Bittman:

Q. Now Mr. Bromley, did you and Mr. Baker prepare any papers in a preliminary way to the preparation of your 1963 tax return? A. Yes, we did.

Q. I now show you Government Exhibit 260 for identification and ask you if you recognize that particular piece of paper? A. This is a piece of paper that I had and I started off listing my income and I put down those amounts that I knew about, plus the amount of—

Mr. Williams: Your Honor, we have not seen this exhibit.

The Court: Show it to counsel.

By Mr. Bittman:

Q. Did you have a conversation, Mr. Bromley, with Mr. Baker concerning Government Exhibit 260, which you have before you? A. We had a conversation about some of the figures that are on here, yes.

Q. What conversation did you have with Mr. Baker
1351 about what figures? A. Well, as I said I immediately
listed my regular salary, plus I listed the Redwood
Bank amount.

Q. How much did you list for Redwood? A. I listed
\$5,000 for Redwood. I listed an amount I had received
from the Otis Elevator Company, which was mine for
consultant fees. And I listed that amount that had been
withheld from my salary at the Coal office.

Q. In connection with other amounts that are on that
particular document, what conversation did you have with
Mr. Baker? A. Well, we had no records there with us
concerning these, we had no 1099's or anything, so he
called off the—well, the first figure that he gave me was
\$500 for International Marketing. And we discussed that
because I had never heard of it before.

Q. What did you write on that piece of paper when he
told you International Marketing? A. I wrote the amount
—\$500—plus "INT Market."

Q. What is the next thing that happened? A. The next
thing is we figured out by counting backwards how much
money I had received from United States Freight. We
knew it started in August, so that would be five months.

Therefore we come to a total of \$2,500.

1352 Q. Then you wrote that amount down there? A.
Yes, and put United States Freight beside it. Then we
really did the same thing with First Western. And we
knew when it started, so we put down \$8,000 for First
Western. We—rather I did. I added up those amounts
and it came to \$37,300. From that I subtracted the In-
ternational Marketing, the United States Freight, the
First Western, which totaled \$11,000, subtracted that,
which meant I had a gross income of \$26,300.

Q. Who told you to deduct that \$11,000, if anyone? A.
I deducted that to show the amount that I had paid Mr.
Baker.

Q. Now, did you and Mr. Baker have this conversation alone? A. Yes, there was no one there. Periodically, someone would walk through the room, but not stop. We were brought coffee after a period of time.

Q. Who brought coffee? A. Mr. Baker's houseboy.

Q. Is everything, Mr. Bromley, in ballpoint pen on this particular piece of paper which appears on the upper third of the paper in your handwriting? A. Yes. That is correct.

Q. To the best of your recollection, everything that appears in pencil on that Government exhibit is written by Baker at that time and place? A. Yes, sir. That is correct.

Q. I now show you Government Exhibit 261 for identification and ask you if Mr. Baker made those computations in pencil during the course of that meeting? A. Yes, he did.

Q. I show you Government Exhibit 262 for identification and ask you if Mr. Baker made those computations, whatever appears in pencil on that particular Government exhibit? A. He made these computations. I had my records with me and as I would call off some expense or something he would write it down.

Q. To the best of your knowledge, did Mr. Baker write everything which appears on Government Exhibit 263 which appears in pencil? A. Yes.

Q. Did you bring a draft tax return with you, Mr. Bromley? A. I am sure I did.

Q. And I now show you Government Exhibit 264 for identification, which purports to be a Form 1040, United States Individual Income Tax Return, also includes a Schedule C of 1040 Profit or Loss from business or Profession, the third page which appears to be a Schedule C-3, Computation of Social Security Self-Employment Tax, and ask you if everything written there in pencil on those three pages of that 1963 draft re-

turn was written on there by the defendant, Robert G. Baker? A. It appears to be, Mr. Bittman.

Q. That was written by Mr. Baker, was it not, Mr. Bromley, at Mr. Baker's home in late December, 1964, at this meeting you just testified to? Is that correct? A. Yes. That is correct.

Q. Now, did you file your tax return for 1963 to the best of your knowledge? A. Yes, I did.

Q. I now show you Government Exhibit 5 for identification and ask you to examine that and ask you if that purports to be the return that you filed for 1963? For the year 1963. A. Yes, this is my 1963 tax return.

Q. Which was filed? A. Yes, which was filed and received by Internal Revenue.

Q. Now, Mr. Bromley, in connection with your 1963 tax return, which you filed, did you receive as either gross receipts to you or income to you, \$2,500 from United States Freight Company?

Mr. Williams: Your Honor, the line on the return says "gross receipts"—it does not say income, and I think the question is not proper for that reason.

The Court: Can you rephrase your question, Mr. Bittman?

By Mr. Bittman:

Q. Mr. Bromley, in 1963, did you receive gross receipts of \$2,500 from United States Freight Company? A. I received checks totaling \$2,500 from the United States Freight Company.

Q. From whom—who did you receive those checks from? A. From—well, they were drawn by the United States Freight Company. I was given them for Mr. Baker.

Q. Given them for Mr. Baker? A. Yes.

Q. Did you have gross receipts of \$2,500 from the United States Freight Company—

Mr. Williams: I suggest that is a legal question whether he had gross receipts or not.

Mr. Bittman: Leading question.

Mr. Williams: Yes. The testimony is \$2,500 in checks were drawn by the United States Freight Forwarders, payable to Mr. Bromley and declared as gross receipts. I think it is a legal question as to whether or not the term "gross receipts" comprehends this \$2,500 payment or not.

The Court: I will permit him to answer.

1356-57 By Mr. Bittman:

Q. Now, Mr. Bromley, to the best of your knowledge did you receive \$2,500 in gross receipts from the United States Freight Company during 1963? A. As receipts, no, I did not.

Q. Did you receive \$8,000 in gross receipts from First Western Financial Corporation to the best of your knowledge during 1963? A. No, I did not.

Q. During 1963, did you receive \$500 from International Marketing as gross receipts during 1963? A. No, I did not.

Q. Now, Mr. Bromley, did you pay to Mr. Baker or anyone else during 1963 \$11,000 in legal and professional fees as other business deductions? A. No, I did not.

* * * * *

1358 Mr. Williams: I think, Your Honor, that the prior questions asked at the conclusion of the session were not fair questions and should have been stricken because they called for legal conclusions which had been suggested to the witness. The record shows, Your Honor, that he did in fact have checks drawn to him in the amount which he reported on his Schedule C and that he did in fact turn those checks over to Mr. Baker. And
1359 this jury has been left with the impression that that is not the fact by virtue of a technical position which the Government has taken and which it has advanced to Mr. Bromley.

The Court: I understand your position, Mr. Williams.

Mr. Williams: But our position is, Your Honor—

The Court: Of course, the witness is a lawyer.

Mr. Williams: I understand that, Your Honor, but he is not testifying as an expert. I don't think Mr. Bittman has held him out to be an expert in the field of taxation. But, Your Honor, the fact is and the reason that I suggest that that line of inquiry by counsel for the Government was unfair is that in all respects the witness did report his gross receipts accurately, and he did report the amount of money deducted and paid over to Mr. Baker and Mr. Baker did in fact report that money accurately, as the record shows, which is already in evidence.

And I think that the Jury was left with the impression as the result of that question, that that was not the fact. I don't think it was proper because it was a hyper-technical use of some phraseology, which Mr. Bittman had an opportunity to talk to Mr. Bromley about before he put him on the stand, and he elicited answers which I think were prejudicial and I ask those questions be stricken, Your Honor.

The Court: Well, Mr. Williams, you can cross examine the witness on that point. As I recall it, he said he hadn't paid legal and professional fees to Mr. Baker or anybody else in the amount of \$11,000.

Mr. Williams: He has testified, Your Honor, all day about paying those fees to Mr. Baker in the amount of \$11,000.

The Court: Of course, the jury will have the question to determine what that constitutes, Mr. Williams, whether it was legal, professional fees or something else and they will have proper instructions from the Court,—

And the Court requests both counsel to submit instructions well in advance of the Court's Charge.

Mr. Bittman: The Government is ready with its instructions, Your Honor, any time.

The Court: I'd like to consider both instructions well in advance of the time I prepare my charge.

Mr. Williams: Your Honor, we are not ready with ours, and there is no way we could be.

The Court: We don't need them right away but as soon as you can conveniently give them to me I want to see them because I want to study them very closely.

* * * * *

1405 Whereupon,

Wayne L. Bromley

was called as a witness, and having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Are you the same Wayne Bromley who has previously testified in this case? Is that correct? A. I am.

Q. Mr. Bromley, commencing the Fall of 1963, and continuing into 1964, were you interviewed, sir, by several investigative bodies, namely, the Federal Bureau of Investigation, the Internal Revenue Service, Senate investigators, and the Comptroller of the Currency investigators? A. Yes, I was.

Q. During the course of those interviews, Mr. Bromley, did you state to them the truth in all respects? A. No, I did not.

1406 Q. Why didn't you, sir? A. Really for quite a few reasons.

First, I didn't want to—

Mr. Williams: Unless counsel is attempting to impeach his own witness at this point, I suggest it is not relevant.

Mr. Bittman: Quite obviously it is not for that purpose. I want all the facts to be known to the jury. Mr. Williams will bring it out on cross-examination anyway.

The Court: The Court will permit it.

The Witness: First of all, I did not want to get involved into this situation. I was attempting to stay out of it if possible.

I first talked with—I am not sure whether it was the Senate Rules Committee investigator or the F.B.I. I very frankly was attempting to play down my role and I was hoping that I would be forgotten.

Secondly, I was asked—this was after I had talked with the F.B.I.—I was asked not to talk with them. I at that time was not represented by counsel. And that was basically it.

By Mr. Bittman:

Q. You made the statement, Mr. Bromley, you were asked not to talk to them. Who asked you not 1407-09 to talk to them? A. Mr. Baker asked me not to talk to them.

• • • • •
1412 Q. Mr. Bromley, I now hand you Government Exhibit 264, marked for identification, and direct your attention, sir, to page two of your draft 1963 tax return, preliminary Schedule "C". And you testified yesterday that all the pencilled writing on this draft return was written there by Mr. Baker, is that correct? A. Yes, it is.

Q. Now, did you have a conversation with Mr. Baker at the time that that draft Schedule "C" tax return was prepared? A. Mr. Baker informed me that the—

Mr. Williams: (interrupting) That is not responsive, Your Honor.

Mr. Bittman: I will rephrase it.

By Mr. Bittman:

Q. Did you have such a conversation, yes or no? A. Yes, we did.

Q. Would you please relate the conversation. A. Well, we were discussing the return. We were discussing the \$11,000 which had come in from First Western, United States Freight and International Marketing.

The Court: What was that third?

The Witness: International Marketing, Your Honor. The question was what to do with it. And, as to number one, whether it even should be reported, being it was not mine. And also because Mr. Baker had already reported it himself. And Mr. Baker said I should report it. And then upon my Schedule "C" put it as outgoing under legal professional fees. He said this is what his tax attorney recommended doing with it.

By Mr. Bittman:

Q. Now Mr. Bromley, at the time that Mr. Baker stated to you to take out this \$11,000 as other business deductions under legal and professional fees, did you have a further conversation? A. I think I have already stated approximately what our conversation was.

Q. Have you exhausted your recollection, Mr. Bromley? A. I have. He just told me that—he asked me to put it in this way. He said that he was putting it in this way, and it would just reflect that—I said, well, if the Internal Revenue were to go over my return that I had no proof of the fact that—that I had paid any fees—or had paid any moneys at all to anyone. And he said that if there would be an investigation on my return, that I would not have to prove anything. Just don't say anything. It is up to the Government to show where those moneys went.

Q. Now Mr. Bromley, to the best of your recollection, how much tax was due and owing as a result of your filing of your 1963 tax return? A. \$469, I think.

Q. I will show you Government Exhibit 5 to refresh your recollection. Was it \$469.42? A. Yes.

The Court: For what year is this?

Mr. Bittman: This is the 1963 tax return filed by Mr. Bromley, Your Honor.

By Mr. Bittman:

Q. From whom did you get the money to pay this \$469.42? A. The money was actually given to me by Mr. Ernest Tucker.

Q. What immediately preceded that, if anything? A. A telephone call to him, to give it to me.

Q. Were you present when that telephone call was made? A. I was.

Q. Who made the telephone call? A. Mr. Baker.

Q. Did you have a conversation with Mr. Baker at that time? A. Well, this was on the day I filed it. On December 31, I guess—and I went by the "P" Street office, and we discussed the fact that I did have to pay 1415 this extra money. And he just called up Mr. Tucker and said I was going to come in and to give me a check.

Q. So then Mr. Tucker— A. I don't believe he had any checks around.

The Court: I do not understand you, sir.

The Witness: I don't believe Mr. Baker had any checks there or anything. He just called Mr. Tucker and asked him to give me the five hundred.

By Mr. Bittman:

Q. And Mr. Tucker did, is that correct? A. Yes, he did.

Q. Mr. Bromley, to the best of your recollection did you ever at any time receive directly from First Western Financial Corporation of Las Vegas, Nevada, any checks? A. No, I did not.

Q. Mr. Bromley, to the best of your recollection did you ever receive any checks directly from United States Freight Company, located in New York City? A. No, I did not.

Q. Mr. Bromley, to the best of your recollection did you at any time ever receive any checks directly from Harvey Aluminum, located—home office in Torrance, California? A. No, I did not.

Q. To the best of your knowledge, were these
1416 checks sent to 2000 P Street, Northwest? A. Yes.
That is correct.

Q. Did you have an office at 2000 P Street, Northwest,
during that period of time? A. No, I did not.

Q. Now, do you recall any conversations on the telephone with Mr. Baker prior to your receiving these checks from him? A. Occasionally I would get a phone call. There was no set pattern at all in my receiving these checks. I could receive them in a restaurant, at his office, a car, just any place that we might be. Also, there was really no necessity for any conversation as such. Simply by handing it to me I knew what to do with it.

Q. To the best of your recollection, Mr. Bromley, have you ever performed any services for Harvey Aluminum, or Harvey Aluminum Sales Company? A. No, I have not.

Q. Have you ever performed any services for an individual by the name of Keith Linden, who was an officer of Harvey Aluminum? A. No, I have not.

Q. Have you ever performed any services for International Marketing? A. No.

Q. Did you at any time, Mr. Bromley, in connection with United States Freight checks, and correspondence, and the Harvey Aluminum checks, ever
1417 authorize anyone to sign your name? A. No, I did not.

Q. Now, you testified yesterday Mr. Bromley, that you did borrow I believe the proceeds of four of those checks from Mr. Baker. I believe totaling three thousand dollars. Is that correct? A. Yes, that is correct.

Q. Now, was that three thousand dollars that you borrowed from Mr. Baker offset because of money that he owed you? A. Yes, that is correct.

Q. Now Mr. Bromley, directing your attention to March 22, 1965, in the evening, what if anything occurred at that time and place? A. I received a telephone call from Mr. Clifford Jones.

Q. And where were you at that time? A. I was at home.

Q. Did you recognize Mr. Jones' voice at that time? A. I did.

Q. Is this the same Clifford Jones that you had previously had the conversations with in Las Vegas on April 1418 21, 1963? A. It is.

Q. Would you please state to the Court and to the jury to the best of your recollection what Mr. Jones stated to you at that time? A. Mr. Jones informed me that he had appeared before the Grand Jury the previous week and he told me in general what he had testified to before the Grand Jury. He said that he had discussed retaining me with Mr. Baker in Mr. Baker's office here in town, and that after that conversation he retained me to represent him. And that he had known nothing at all about any moneys that were to go to Mr. Baker. That if he did receive any of them, it was because of a separate agreement between Mr. Baker and myself, and that he knew absolutely nothing about it.

Mr. Williams: Your Honor, I think the record is sufficient, but out of an abundance of caution, I would like to state for the record that we object to this line of inquiry as incompetent and irrelevant with respect to defendant Baker.

The Court: I understand your position.

Mr. Williams: So I won't have to renew this objection. Let the record show I have a continuing objection to this line of questioning.

The Court: Overruled.

The Witness: Well, we talked on for—actually—
1419 well, the conversation lasted about ten minutes or so. He did really all the talking. And the things he said were inconsistent with what I knew to be true, and I really did not say much to him. After he hung up, I thought about it for a while and then I called my attorney, Mr. Sandground.

By Mr. Bittman:

Q. You cannot testify what you told your attorney, Mr. Bromley. Now, later that evening, or very early the next morning, did you have occasion to call Mr. Jones back in Las Vegas? A. I did.

Q. And do you recall approximately when you called him back? A. I called him around 12:15 A.M., which would have been around 9:15 Las Vegas time.

Q. This would be several hours after Jones called you, is that correct? A. Yes. About three hours or so. Two or three hours.

Q. Would you please state to the Court and the jury what conversation took place at that time? A. Well, I told him that I could not talk with him when he had called. That I had guests, and we again had approximately the same conversation, but this time I was more an active participant in it. And I told him that, about the 1420 Las Vegas meeting, and he said that he had not mentioned that to the Grand Jury. And he said don't you remember that we met in Bobby's office and discussed it. I told him that I did not recall of any such conversation at all. So then he more or less summarized what he had told them and he pointed it in a form of a question or such. He said, "Now isn't that right?" I said, "Cliff, are you asking me or telling me?" He said, "Well, I am telling you." We discussed the possibility—he asked me if I was going to be on the West Coast any time in the near future. I told him, no, I was not, but that I was going to be in Chicago. He said well how about New York. So finally we decided that perhaps we should meet in Los Angeles, which we did.

Q. Now Mr. Bromley, did you meet with Mr. Clifford Jones in Los Angeles, California? A. I did.

Q. Do you recall the date? A. March 26.

Q. 1965? A. 1965.

Q. That was a Friday? A. It was.

Q. Did you have a meeting with Mr. Clifford Jones? A. I did.

1421 Q. Where, sir? A. At the Beverly Wilshire Hotel in Los Angeles.

Q. Was anyone else present besides yourself and Mr. Clifford Jones? A. Mr. Baker was present.

Q. Approximately what time did this conversation take place? A. Around ten in the evening, approximately.

Q. Would you please state to the Court and the jury to the best of your recollection what conversation took place at that time and at the Beverly Wilshire Hotel? Was this in the room of Mr. Jones? A. Yes, this was Mr. Jones' suite. He again told us what—

Mr. Bittman: Mr. Bromley, don't say "He." There were three people present.

The Witness: Mr. Jones told Mr. Baker and myself of his appearance before the Grand Jury and he stated that he had told the Grand Jury that he knew absolutely nothing about Mr. Baker getting any of the money. That if he had gotten any, that it had been—if Mr. Baker had gotten any it was a personal arrangement that Mr. Baker and I had between us. And he said that I had to tell—I had to tell the Grand Jury that he knew nothing about it. Otherwise, he would be in the soup. He at first denied the

1422 meeting in Las Vegas, but then both Mr. Baker and I told him that he was just kidding himself, that he knew it took place. And he later agreed that it had. And Mr. Baker said that it was important that we get our stories together, that he was going to be in trouble for perjury, that Mr. Jones would be in trouble for perjury, that he would be in the trouble for campaign contributions. And we discussed it a little while longer, then Mr. Baker left Mr. Jones and myself.

By Mr. Bittman:

Q. Do you recall anything further that was said when Mr. Baker said he was in trouble with campaign contributions, Mr. Bromley? A. No, I do not.

Q. You did testify before the Grand Jury on June 3rd, 1965? A. I did.

Q. Directing your attention to page 5482, I ask you to—

The Court: Show him the page and see if it refreshes his recollection.

By Mr. Bittman:

Q. I ask you to examine that and ask you if that refreshes your recollection. A. Yes, it does.

1423 Q. Now that your memory is refreshed, what did Mr. Baker state in that connection? A. Well, he stated that he was in trouble for not—that Mr. Jones was in trouble for not talking with someone before he went before the Grand Jury, that he was in trouble for perjury.

Mr. Williams: Who was?

The Witness: That Mr. Jones was in trouble for perjury, and that Mr. Baker was in trouble for illegal campaign contributions.

By Mr. Bittman:

Q. Approximately at that time, Mr. Bromley, did Mr. Baker leave? A. Yes, he did.

Q. Did you have a further conversation with Clifford Jones at that time and place? A. We continued to discuss the—actually, the same things—I guess you might say we rehashed it a little bit more and then he was leaving for Las Vegas, on his way to the airport he dropped me off at the Beverly Hilton Hotel. On the way over, or while we were leaving, we discussed the way that I had handled it—I had handled the money coming in from First Western on my income tax return. And he said that whatever I did, to list the '64 money myself and that he would pay the taxes on it.

1424 Mr. Bittman: Thank you, Mr. Bromley. Your witness. Mr. Williams.

Cross Examination

By Mr. Kostelanetz:

Q. Mr. Bromley, I am Mr. Kostelanetz, one of Mr. Baker's counsel. Mr. Bromley, I would like to go back to that part of direct examination when you testified concerning your first knowledge of Mr. Baker. Is it correct, sir, that you were pageboys in the Capitol together? A. Yes, that is correct.

Q. You knew each other through your teen years and thereafter, is that right? A. Yes, that is correct.

Q. And you attended the Capitol page school together? A. That's correct.

Q. And then I think you testified on your direct examination that you attended the American University Law School together? A. That's correct.

Q. And graduated in the class of '55. Now, is it true that you were fraternity brothers together? A. That is correct.

Q. And later on did Mr. Baker recommend you for 1425 a job in the Senate Library? A. He did.

Q. And you got a job in the Senate Library, is that right? A. That's correct.

Q. And over the years did you have family exchanges between yourselves and Mr. Baker's family? A. Yes, sir.

Q. Your wives were friendly? A. We were extremely friendly, my family and his kids.

Q. His kids would go to your house and vice versa, is that correct? A. That is right.

Q. You attended golf and football games together and that kind of thing? A. Yes.

Q. In other words, he was one of your closest friends, is that right? A. He was my closest friend.

Q. Was the closest? A. Yes.

Q. I see. Now is it correct, sir, that during this period that Mr. Baker was at the Capitol, that you had complete access to Mr. Baker's office day and night? A. Yes. That is correct.

1426 Q. You had the key to the office? A. I did, to the one on the first floor.

Q. That was Mr. Baker's office at the Capitol? A. Yes.

Q. And you had a key to his law office at Tucker and Baker as well, is that correct? A. No, I did not.

Q. You did not? A. I had the key to that particular suite back in 1955. However, I did not have the key, say, from '58 on.

Q. Now, is it correct, sir, that you used, in the nature of your work—you spent most of your time up on the Hill, is that right? A. Well—

Q. In the sixties? '59, '60, '61, '62? A. My time was just about equally divided from my own office at 16th and K and Capitol Hill.

Q. When you were on the Hill, did you pretty much use Mr. Baker's office as your own office, or cloakroom? A. I did.

Q. Would it be fair to say you even had the key to the bar? A. I knew where the common key to the bar was kept.

Q. I see. All right, now, during the years 1960 1427 and '61 and '62—

The Witness: Would you repeat those years, Mr. Kostelanetz?

Mr. Kostelanetz: 1960, '61, and '62.

The Witness: All right.

By Mr. Kostelanetz:

Q. Would it be accurate to say that you borrowed from Mr. Baker moneys in the neighborhood of about eleven thousand dollars? A. No, sir. Your years are off.

Mr. Bittman: In any event, Your Honor, with respect to years '60 to '62 I would object on the grounds of relevancy.

The Court: Overruled. I will permit you to go into that, Mr. Kostelanetz.

Mr. Kostelanetz: Pardon me?

The Court: I will permit you to go into that.

By Mr. Kostelanetz:

Q. Mr. Bromley—this is page 5401—you recall, Mr. Bromley, you appeared before the Grand Jury, I think on February 23, June 2 and June 3, 1965? A. Yes, that's correct.

Q. Now, I ask you whether in the course of that appearance, and the appearance was on June 3, 1965, were 1428 you asked these questions—and did you give these answers—line nine—question: "Now how much money have you borrowed from Mr. Baker from the first of January, January 1, 1960, through '62, during those three years? All of 1960, all of 1961, all of 1962?"

Answer: "The amount that is in dispute between us, we never handled it in a business-like way at all. There has never been anything in writing between Bobby and myself. It is in the neighborhood of, say, eleven thousand dollars. Something like that."

Question: "That is for those three years, is that right?"

Answer: "Yes, that is correct."

Question: "And did Mr. Baker give you checks or cash to make up this approximately eleven thousand dollars?"

Answer: "Both."

Now, my question is this. Mr. Bromley, were those questions put to you and did you give those answers? A. I don't specifically recall. I do recall going into the amount of the loans that I did make for Mr. Baker, assuming that that particular testimony was not clarified at another point, then I was in error. But only as to the years.

Q. May I most respectfully ask Your Honor to strike out the balance of his answer after his very—very 1429 first reply.

Mr. Bittman: I object to that.

Mr. Kostelanetz: He volunteered.

The Court: Mr. Kostelanetz, I will permit the witness to explain his answer. I will also ask the witness your question. Whether those questions were put to him and whether you gave the response which you read.

Mr. Kostelanetz: That is what I asked.

The Court: If you answer that question, Mr. Bromley, you may then make whatever explanation the facts warrant.

The Witness: Your Honor, I quite frankly do not recall that exact question. What I do recall as being asked by the Grand Jury about loans from Mr. Baker to me—if I did answer that particular question in that manner, then I was confused as to the years.

By Mr. Kostelanetz:

Q. Do you deny, sir, that those questions were put to you and that you gave those answers? Could you answer that, sir, yes or no? A. If that was a direct quote from the Grand Jury testimony, I daresay I did answer the question in that manner.

Mr. Kostelanetz: May I have the concession of the prosecutors that is a direct quote?

1430 Mr. Bittman: You have my assurance, Mr. Kostelanetz. You are quoting and I do not object. It is accurate.

By Mr. Kostelanetz:

Q. Now, in 1962, did there come a time when you needed to make a down payment on a house? A. Yes.

Q. Was that about June of 1962? A. No, sir. You are now talking about down payment. The down payment was made in March. I was to go to settlement in June.

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1432 By Mr. Kostelanetz:

Q. I think just before recess, Mr. Bromley, I asked you a question with regard to the purchase of a house, and as I recall now you said the down payment was in March but

the closing was in June. Is that right? A. Yes, sir, that is correct.

Q. Now, in connection with the closing, did you talk to Mr. Baker and ask him for an advance? A. Mr. Kostelanetz, some time during the period between March and June I borrowed \$3,000 from Mr. Baker, and I am sure we had some conversation at that time.

Q. Now, you cannot fix the date exactly, is that right? A. No, sir, I can not.

Q. All right.

What I would like to do is to show you defendant's Exhibit No. 7, which is a check of Mr. Baker's, dated June 29, 1962. I take it you recognize Mr. Baker's handwriting?

A. Yes, sir; that is Mr. Baker's handwriting.

Q. And the initials in the lower lefthand corner, 1433 is that right? A. Yes. "W-B" is written in the lefthand corner.

Q. And you recognize that the check was cashed on June 29 in the Senate Clerk's office, or the National Clerk's office?

A. Yes, sir, that is correct.

Q. Now, to help you refresh your recollection, I tell you that June 29, 1962, was a Friday. Do you recall whether or not that was the time that cash was needed to meet the settlement date? A. No, sir, Mr. Kostelanetz, to the best of my recollection, this would have been after the date of settlement, and the only gauge I am using to fix that is that I recall being in Pittsburgh around the 11th of June, and I was talking with my wife and she said, well, by long distance phone, because she was here in town, and she said that things were not going well as far as the settlement was concerned.

I may be in error but to the best of my recollection, settlement was going to be around June 17. As I say, I could be in error. But I am reasonably sure that it was earlier than June 29.

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1434 Q. Now was the loan which Mr. Baker made to you at that time, the sum of \$5,000, for purposes of the settlement, if you recall? A. Mr. Kostelanetz, to my best recollection, the amount that I borrowed from Mr. Baker was \$3,000.

Q. Now, this loan, then, this \$3,000 loan, was in June? A. No, sir. There again I say that it was prior to settlement. In fact, I would say that it was perhaps closer to March than to June, because I am reasonably sure I would not have entered into the contract in March unless I was sure I was going to have the rest of the down payment or the settlement charges when it came due.

Q. All right.

Well, whenever it was, you say it was in March or approximately March, he gave you \$3,000 in currency, 1435 is that correct? A. He gave me \$3000. I believe it was in currency. It could have been by check but I believe it was in currency.

Q. Well, do you recall that Mr. Baker ever made any special trip to the bank to obtain the \$3,000?

Mr. Bittman: I will object to this line of questioning. It is immaterial and not relevant to the issues.

Mr. Kostelanetz: Your Honor please, I have to take one thing at a time, Your Honor.

It is most relevant.

The Court: I will let you ask the question.

The Witness: I do think he did have to make a special trip to the bank for it.

By Mr. Kostelanetz:

Q. At any rate, is it correct, sir, that you returned \$2,000 of that \$3,000 to Mr. Baker before the end of 1962? A. Mr. Kostelanetz, that is to the best of my recollection.

Q. Can you place the date of that as late as November or December, 1962? A. I believe it was earlier than that. I believe it was after the June settlement date which did not go through. I imagine I would have given him the money earlier than November or December.

Q. I see. Now, in the fall of 1963, is it correct
1436 that you borrowed \$4,000 from Mr. Baker? A. Yes,
sir, that is correct.

Q. And that was to give your mother a part payment
on a house that she was buying? A. Yes, that is correct.

The Court: How much was that, Mr. Kostelanetz?

Mr. Kostelanetz: \$4,000.

The Court: 1963?

Mr. Kostelanetz: Yes.

By Mr. Kostelanetz:

Q. Is it correct, sir, that in 1963 and 1964 you borrowed
from Mr. Baker, not including a certain sum of \$3,000, a
total of \$8,000? A. Would you please rephrase, or repeat
your question, rather?

Q. Yes.

Is it correct, sir, that in 1963 and 1964, you borrowed
from Mr. Baker a total of \$8,000, not including—which
means over and above the \$3,000— A. Yes, I know what
it means, sir.

Mr. Kostelanetz, I do not recall the dates which Mr.
Baker loaned me money. I did start in 1962 and take
it for the dates as to the total amount, as to the dates of
these loans, and other than the exact one of \$3,000
1437 and of \$4,000, and of a couple of \$500's and a couple
of \$1,000's, I cannot give you the exact amount of
those individual loans or the dates.

He and I both were keeping a mental record of the total
and not of the dates.

Q. I see.

Well, let me see if we can, at page 5412, before the
Grand Jury, Mr. Bromley, and on June 3, 1965, on line 6,
were you asked this question:

“And approximately how much have you borrowed from
Mr. Baker during the years of 1963 and 1964 to this date,
not including the \$3,000 before?

“A. Not including the \$3,000?

"Q. That is right. Let us have a new amount.
 "A. O.K. A new amount. We will hit it at \$8,000."

Were those questions asked of you, sir, before the Grand Jury, and did you give those answers? A. I seem to recall that question and I seem to recall that answer.

Q. Now, is it correct, sir, that about December 29, or 30, or 31, 1964, you indirectly borrowed from Mr. 1438 Baker \$500 to pay your taxes?

Mr. Bittman: I object to the form of the question.

The Court: Yes. It is not very clear to me. I am sure you know a lot more about the case than I do. But suppose you rephrase it in view of the objection.

By Mr. Kostelanetz:

Q. Is it correct, sir, that on or about December 29, 30, or 31, 1964, you indirectly borrowed \$500 from Mr. Baker, by Mr. Tucker? A. On December 31 to the best of my recollection Mr. Tucker gave me a check for \$500. The proceeds were to be used for my taxes.

He did this at the request of Mr. Baker. I am really not sure as to the arrangement between Mr. Baker, if he has paid Mr. Tucker back, then I, too, because I paid Mr. Tucker back part of it.

He asked me to pay him back part of it.

Q. Was that the last time that you borrowed money from Mr. Baker, on December 29, 30 or 31st, 1964?

Mr. Bittman: I object, your Honor. That is not the testimony. He did not say he borrowed this money from Baker.

Mr. Kostelanetz: I will withdraw the question and rephrase it.

The Court: Thank you, Mr. Kostelanetz.

1439 By Mr. Kostelanetz:

Q. Now, would you look at page 5316, Mr. Bromley, as soon as counsel finds it—it is the testimony of June 3, 1965.

Mr. Kostelanetz: Would your Honor bear with us for a moment? We want to get together on pages. In my book the reporter dropped 100 pages.

By Mr. Kostelanetz:

Q. Now, on line 15 of page 5316 of the testimony of June 3, 1965, were you asked this question:

"Q. When is the last time you borrowed money from Mr. Baker?

"A. Well, the last time I borrowed money directly from him that I recall was that check last October.

"Q. You are talking about Harvey Aluminum check?

"A. I said directly from him. Indirectly I borrowed from him \$500 on December 29 or 30 or 31, and that was to pay my taxes."

Were you asked that question and did you give that answer with regard to borrowing the money from Mr. Baker on December 29, 30 or 31, to "pay my taxes"—your taxes.

1440 Did you give that answer? A. Apparently I did, sir.

Q. Now, is it correct, sir, that on February 15, 1965, you had your first meeting with Mr. Bittman, is that right? I do not mean Mr. Bittman specifically. The prosecution staff. A. That is approximately correct, sir.

Q. And on February 23, 1965, you appeared before the Grand Jury? A. Yes, that is correct.

Q. Now, in April of 1965 did you go to see Mr. Baker at his home and borrow another sum of \$1,000? A. What was that date, Mr. Kostelanetz?

Q. April, 1965. A. I will say approximately, yes, I did borrow some money during that overall period. It could have been April or May, sometime like that.

Q. April or May, 1965? A. Yes, about that.

Q. All right.

Now, I would like to direct your attention to the Redwood Bank transaction, if you recall the cashing of the check occurred on or about March 12, 1963. A. Yes, sir, I do.

1441 Q. The check which is Government's exhibit 154 is dated March 4, 1963, and appears to be cashed on March 12, is that right? A. Yes, sir, that is correct.

Q. Now, is it correct, sir, that Mr. Baker told you originally that you should list the whole \$5,000 on you income tax return as being your fee? A. Yes, sir, that is correct.

Q. Now, is it also true—I will withdraw that.

Is it also true that you included the whole \$5,000 in your income tax return in 1963 as your income? A. Yes, sir, that is correct.

Q. Now, Mr. Baker told you, did he not, that he, Mr. Baker, also declared the Redwood Bank fee or half of it in his income? A. Yes, sir, that is correct.

Q. Well, is it correct, sir, that the idea of both of you in reporting the same money was ridiculous? A. I think I so stated at the Grand Jury, sir.

Q. Now, is it your statement that you have overpaid your tax for the year 1963 with respect to \$2500 of the Redwood fee which you picked up in your income? A. I have seriously given thought to filing an amended return.

1442 Q. And you told that to the prosecution, I take it, and to Mr. Rosetti, who has been working with the staff? You know Mr. Rosetti, do you not? A. Yes, sir; I know him.

Q. He is the I.R.S. agent who is working with the prosecution staff.

Well, did you apply for and receive any refund for your overpayment in 1963? Have you done so? A. No, I have not.

Q. Did anyone on behalf of the Government suggest to you that you should apply and receive a refund?

Mr. Bittman: I object. Irrelevant and immaterial.

The Court: Overruled.

The Witness: No, sir, to my knowledge I have never discussed that with any representative of the Government. In fact, I have never even discussed it with my own attorney, sir.

By Mr. Kostelanetz:

Q. Now, at the time that you received this \$5,000 fee from the Redwood Bank, was it correct that you were indebted to Mr. Baker for at least \$11,000? I think you have just so testified, approximately. A. Well, now, sir, your question cannot be answered "yes" or "no."

1443 Q. Well, could you try? A. No, sir, I would not even attempt to answer that one yes or no. I would prefer explaining my answer if I may.

Q. Well, with his Honor's permission I will ask more questions, your Honor.

The Court: Are you withdrawing the question?

Mr. Kostelanetz: Well, I will rephrase the question, your Honor.

The Court: Very well.

By Mr. Kostelanetz:

Q. Is it correct, sir, that as of March of 1963 Mr. Baker had advanced to you, loaned to you, at least eleven thousand dollars—at least?

Could you answer yes or no? A. What was that date, Mr. Kostelanetz?

Q. As of July, 1963—as of March, 1963. A. As of March, 1963 he had advanced me \$11,000?

Q. At least \$11,000? A. No, sir.

By Mr. Kostelanetz:

Q. Had he advanced you at least \$10,000? A. As of March, 1963?

Q. Yes. A. No, sir.

1444 Q. Didn't you testify earlier before this jury, just before recess that during the period 1960, 1961 and

1962 Mr. Baker advanced you checks and cash of approximately \$11,000? A. No, I did not.

Mr. Bittman: Objection.

By Mr. Kostelanetz:

Q. Did you so tell the Grand Jury, sir? A. Under a previous question I told you that, if I said that at the Grand Jury, I was speaking of an amount but perhaps I was in error as to the date.

Q. Well, as of March, 1963, sir, Mr. Baker had made you advances prior to that date, is that right? A. Prior to March of 1963, Mr. Baker had made advances to me.

Q. Now, irrespective of what you may or may not have said before the Grand Jury, can you give us your present recollection as to how much in dollars Mr. Baker had advanced to you, that is, prior to March of 1963?

Mr. Bittman: I will again object. We are going over ground previously covered and I do not believe any of it is relevant or material to the issue.

The Court: It is a question of evaluation by the jury.

I will permit the question.

1445 The Witness: May I have a piece of paper, please?

The Witness: Mr. Kostelanetz, I would say in the neighborhood of perhaps, give or take a thousand or two, I would say around \$4,000.

By Mr. Kostelanetz:

Q. \$4,000, that is your testimony? A. Yes, sir, in fact I will be glad to identify them for you.

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1446 Q. Now, going back to March of 1963 and in the area of give and take, wasn't it at that time that you gave, physically handed Mr. Baker \$2500 in currency, the 12th month of 1963, upon the cashing of the \$5,000 check, the exhibit in front of you? A. Mr. Baker—you have come to the point now of being technical as to whether I handed it to him or him to me.

I don't think it makes that much difference. He got \$2500 from the check made out to me in the total amount of \$5,000.

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1447 By Mr. Kostelanetz:

Q. Having been advised by Mr. Baker that the entire \$5,000 of the Redwood Bank fee was your fee, isn't it a fact, sir, that the \$2500 which you received from Mr. Baker was a repayment of part of the debt which you owed Mr. Baker— could you answer that yes or no.

Mr. Bittman: I object to the question, your Honor, with three or four facts set forth in that question. I object to the form of the question.

The Court: Overruled.

He can answer the question.

Was the \$2500 that Mr. Baker took from the Redwood check repayment of previous loans?

The Witness: Your Honor, as far as I am concerned, it was a bite of the check. I cannot testify as to the state of Mr. Baker's mind.

1448 By Mr. Kostelanetz:

Q. Now, I think you testified that later on, and I am moving for the moment from 1963 to 1964, you told Mr. Baker that, while you did not mind accommodating him with regard to the business of cashing checks on behalf of Mr. Baker, you finally said to him that you realized that it was not a wise thing to do, was that the essence of what you said to Mr. Baker? A. Yes, that is the substance.

Q. And in substance did Mr. Baker say to you it was perfectly all right, no hard feelings? A. There were no hard feelings at all, I am sure. I am sure he understood.

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1451 By Mr. Kostelanetz:

Q. Now, would this be correct, sir, with regard to the various—with regard to the stationery which you had left

behind, Mr. Bromley, at the office of Tucker and Baker on "P" Street, you knew that that stationery had been left behind there, is that right? A. Yes, sir. I imagine I did.

Q. And is it correct, sir, that with regard to some of these people mentioned here, the corporation, say of First Western, you knew that your stationery there would be used to send invoices? A. Yes, I knew this. Correct.

Q. Now, by the by, did you not receive a Form 1099 with regard to Harvey Aluminum payments, did you not? A. I do not recall receiving it, sir.

Q. You know what a Form 1099 is, is that right? A. Yes, sir, I do.

1452 Q. That is the statement which the payor sends to the Federal Government with a copy to the individual to whom payment is made, is that right? A. Yes, sir, you are right.

Q. For the purposes of advising both the Treasury or the Internal Revenue and the payee? A. Yes, sir. I understand you.

Q. It is a gentle reminder but included in your return, is that right? A. Absolutely, sir.

1453 By Mr. Kostelanetz:

Q. Is it not a fact, sir, that you did receive a Form 1099 from Harvey Aluminum which you turned over to the Government? A. Mr. Kostelanetz, during the last year or two there have been so many things going on, I have been asked such a number of questions, I cannot answer that question with any degree of certainty either way.

If I did receive a Form 1099 from Harvey Aluminum, then it would have been included within the records that I turned over to my attorney.

Q. I see. But actually on the question of receipt of 1099, as you sit there, just a lot of things have happened and you do not recall one way or the other, is that right?

The Court: Now, is the question directed to a 1099 or directed generally to many things?

Mr. Kostelanetz: No, 1099, sir.

The Court: Do you understand the question, Mr. Bromley?

The Witness: Yes, your Honor; I do.

I repeat I do not specifically recall receiving the 1099.

By Mr. Kostelanetz:

Q. Now, let me see if I can refresh your recollection.

1454 Page 1681, the testimony of February 23.

Were you asked this question, sir:

"Q. And did there come a time in approximately January of 1965 when you received an Internal Revenue Form 1099 from Harvey Aluminum which purported to state how much money Harvey Aluminum paid you in '64?

"A. Yes, I did.

"Q. And will you tell us how much and what the figure was on that Form 1099 as to payments by Harvey Aluminum to you?

"A. Nine thousand.

"Q. All right."

Mr. Bittman, I am quoting:

"You had to turn that form 1099 over to the Government, did you not?

"A. Yes, sir."

Now, I take it what I read to you refreshes your recollection concerning this particular 1099, does it not?

If you can tell me yes or no, but does it? A. No, it does not refresh my recollection.

1455 Q. There is no question you so testified? A. If it is in the transcript, I said it, sir.

Q. We have a concession on that.

Now, it is the fact, sir, that over these many checks, whatever number there were here, it was your practice to cash the checks and turn over currency to Mr. Baker, except in

those instances where you retained the proceeds for advances, is that right? A. Yes, sir, that is correct.

Q. Is it correct, sir, that you just do not know why you just did not give him your own check which you apparently could?

Mr. Bittman: I object to the form of that question, your Honor.

The Court: Sustained.

By Mr. Kostelanetz:

Q. Is it correct, sir, that there was not any reason why you did not deposit the checks which these payors sent, deposited in your bank account, and then you draw your own check in payment to Mr. Baker?

The Court: Do you understand the question, Mr. Bromley?

The Witness: Yes, I do, your Honor. I was thinking about it.

1456 On the contrary, Mr. Kostelanetz, I can think of one reason.

By Mr. Kostelanetz:

Q. All right. I just asked you whether there was any reason. A. Let me complete my answer to you, sir.

Q. I would rather you answer my question and on redirect—

The Court: You asked him if there was any reason why he did not do it some other way, and he is attempting to tell you.

I will permit the witness to answer, Mr. Kostelanetz.

The Witness: You made reference to a First Western check. Well, the arrangement, as I previously testified, was that this money would be recorded as income to me.

Now, if I were to turn around and give my check for \$1,000, that would have to be accounted for, perhaps. Also, as I say, I cannot recall any conversation that Mr. Baker and I ever had as to whether he would prefer a

check or cash. I just don't recall that. But I can certainly see why I would give him cash.

Mr. Kostelanetz: May I most respectfully move to strike out his answer?

The Court: Overruled.

1457 By Mr. Kostelanetz:

Q. Now, I direct your attention to your testimony before the Grand Jury.

At page 5337, line 1.

"Q. Who told you to cash these checks? I mean, the arrangement in Las Vegas was that you were going to receive checks payable to you, the money was intended for Baker. All you had to do was endorse the check and turn it over to Baker. Who told you to cash them?"

And did you give this answer?

"A. I don't recall any definite conversation that anyone told me to cash it. I am sure it was not stated as such. But the impression I got was the fact that they were coming to me because they did not want Baker's endorsement on the check as such. Therefore, there would have been no point of my just endorsing it and turning it over to him because then he would have to in turn, endorse it and himself cash it."

You gave that answer, is that correct? A. That sounds familiar, sir.

Q. Yes. Now, let me ask you this. I am skipping one question and answer.

1458 "Q. Did Bobby ever tell you, 'Wayne, cash these checks and turn the money over to me after you get them cashed'?"

"A. As I said, apparently we had a conversation working out the agreement as such. I don't recall us ever really discussing it. But it was my understanding from the very beginning I was to cash the check and give the

money to Baker. I don't recall anyone saying, 'Give him the cash.' The more I think about it, sitting here now, I was to have been given the money to pay the taxes. I don't know why I just did not give him my own check which I apparently could. I just don't recall any conversation. But apparently there was some because I gave him cash in every instance."

Was that your answer before the Grand Jury, sir? A. Apparently it was, sir.

Q. And it is correct, sir, is it not, that you just do not know why you just did not give him your own check which you apparently could?

Mr. Bittman: I object to the question.

The Court: I will permit the witness to answer.

1459 The Witness: Would you repeat it, please, Mr. Kostelanetz.

By Mr. Kostelanetz:

Q. Is it correct, sir, that you just do not know why you just did not give him your own check, which you apparently could? A. No, I wish now I had.

Q. Did you testify before the Grand Jury, quote— "I don't know why I just did not give him my own check of which I apparently could."? A. I just said so, apparently I did.

Q. Sure.

Mr. Kostelanetz: May I see exhibits 260 through 264?

Your Honor, we are looking for an exhibit, 260, 261, 262 and 263.

By Mr. Kostelanetz:

Q. Mr. Bromley, I would like to turn your attention to the exhibits which you have identified here as 260, 261, 262, 263, 264; those are the work papers used in connection with the 1963 return? A. May I see them?

Q. Surely. I would like first to just now as an area of inquiry with regard to Government exhibit 260—
1460 this is a work sheet on which you say there is handwriting of Mr. Baker's in ink, up in the lefthand corner, is that right? A. No, sir, you are absolutely incorrect: this is me, this is mine (indicating).

Q. Oh, I see.

In other words, in the upper lefthand corner the portion which lists quote, "Red, Int. Market, U.S. Freight, Fruit, Western," that is in your handwriting? A. Yes, sir, that is all in my handwriting.

Q. And the pencil writing is that of Mr. Baker, is that right? A. Yes, sir; that is correct.

Q. Now, the material in the righthand corner which apparently deals with some kind of an interest calculation, I think—you see, if you look at 264, you get \$21.51. A. Yes.

Q. That was done by the accountant, Mr. Wentland, is that right? A. Yes, sir, I would not have known that if you had not shown me the other. But apparently it was.

Q. So that at the time the 1963 return was finally put together and signed by you and by Mr. Wentland, he had Exhibit 260 in front of him as part of his work papers, is that right? A. Apparently so, sir.

1461 Q. Now, up in the upper righthand corner someone wrote "Taxes \$2,364."

Whose handwriting would that be? A. That is my handwriting. That is the withholding tax from the people, the money that had been withheld already.

Q. Now, is it also correct that there is a red tick mark there that looks like an accountant's tick mark, if you know? A. I am not familiar with tick marks. I do not know.

Q. Well, did you place that tick mark on the paper? A. No, sir, I did not.

Q. By the way, where was exhibit—you turned exhibit 260 over to the Government, is that correct? A. I turned all of my records over to my attorney, sir.

Q. I see.

To your attorney. Before turning it over to your attorney, do you recall where these records were? A. Well, for about a week or so immediately prior to that they were underneath the front seat of my car, and prior to that were in Suite 605 at 2,000 P Street, sir.

Q. I see.

At this time at Suite—I will withdraw that question.

1462 Can you give me the approximate date when you picked these records up or took the records at this Suite on P Street? A. Yes, sir. Now that you mention that, I am not sure it was Suite 605. It could have been Suite 614. I do not know. But they were at 2,000 P prior to that.

Now, as to the date, it would be after February 2, 1965, which is—was it 1965—it would be after I retained Mr. Sandground for my attorney. In fact, within a reasonably short period of time, say within a month or so after I employed him.

Q. Within a month.

Can you place the date when you retained Mr. Sandground as your attorney? A. To the best of my recollection, February 2, 1965.

Q. All right.

Now, with regard to Exhibit 261, I call your attention to the fact that the entire exhibit is marked up in pencil except a figure .054. Can you tell me in whose handwriting this entire exhibit is? A. It certainly is not Mr. Baker's. It could possibly be mine.

Q. I see. You are just looking at the number 054, is that right? A. Oh, yes. But the number has no significance to me. But it could perhaps be mine.

1463 I am not saying that it is or is not.

Q. How about the balance of the exhibit? A. Nothing else on the page is my handwriting.

Q. It is not your handwriting? A. No, sir.

Q. Is it Mr. Baker's handwriting? A. It appears to be, sir.

Q. Now, look at exhibit 262, Government Exhibit 262, and in whose handwriting is the penciled part of the exhibit? A. It appears to be Mr. Baker's.

Q. Now, there are certain ink notations like the word "Hilton" and other ink notations. Can you tell me whether or not those were Mr. Wentland's notations? A. I know they are not mine and I know they are not Mr. Baker's.

Perhaps Mr. Wentland's. I do not know.

Q. Did you show this exhibit to Mr. Wentland, at the time that Government's Exhibit 264 was being worked on? A. I don't recall specifically showing him this page, sir. We turned over all of this to Mr. Wentland.

Q. I see. You turned over whatever paper— A. I imagine so. I do not recall specifically handing any one sheet to Mr. Wentland, as such. I know that he did have the original rough draft of the 1040.

1464 He apparently had the "Schedule C" and also the self-employment tax. But I just do not recall the details of the handling at the time, sir.

Q. Is it a fact that Mr. Wentland's calculation of interest appears at 260, that pretty well refreshes your memory, does it not, that you gave Mr. Wentland whatever papers he required in order to assist you in Form 1040 which is Exhibit 264? A. Mr. Kostelanetz, according to you, this is Mr. Wentland's writing. Apparently all of this was turned over to him. Whether it was turned over by me or Mr. Baker or what, I imagine he just kept the whole shebang when he was going to work out the final draft that would be filed.

Q. Well, when you say "apparently it was turned over to him," is that your way of stating that it is your best recollection that it was turned over to him? A. Honest, sir—

Q. To the extent that you have recollection. A. Yes, sir. Fine. It does not make any difference. I do not think. He got it all.

Q. Now, we will turn our attention to Exhibit 264. This is the Form 1040 for the year 1963 and I ask you to please describe in your own way, as quickly as you can, 1465 what portion of the first page is in Mr. Wentland's handwriting, and what portions either are yours or Mr. Baker's.

Mr. Bittman: I object. He has previously testified on several occasions he could not identify Mr. Wentland's handwriting. I object to the form of the question.

The Court: Overruled.

If you can testify, let us have your testimony.

The Witness: The entire sheet, sir?

By Mr. Kostelanetz:

Q. Yes. A. I am certainly no expert. But this appears to be Mr. Wentland down here—

Q. No, this, sir, is kind of missed by the Reporter. Can you say what it is. A. Oh, I am sorry. In my inexperienced way that the phone number which is my own home phone number is in Mr. Wentland's handwriting.

My social security number and my occupation as attorney. My wife's name and my name is Mr. Baker's.

My address appears to be Mr. Wentland's. My company is part Mr. Baker's and part Mr. Wentland's.

On the page also are some pencil notations by Mr. Baker, some of which are traced over in ink, I say, apparently by Mr. Wentland.

1466 There are some figures on the margin, such as "business income," "Total" and so on which apparently are Mr. Wentland's.

Q. Maybe you could read those amounts into the record. The ones done by Mr. Wentland.

Mr. Bittman: I would like to introduce the document if he is going to read it in evidence. I have no objection to introducing it anyway.

Mr. Kostelanetz: I am trying to have the witness identify the portion—I am sorry. I should be talking to you, Judge.

Well, Judge, actually what I want the witness for the moment to do, I appreciate it is a Government's exhibit but what I would like him to do is identify which portion Mr. Wentland wrote.

The Court: I think you are entitled to that information, Mr. Kostelanetz, but I think the document should be in evidence. If you have no objection at that time, I will deal with that proposition.

Do you offer it?

Mr. Bittman: At this time we will offer the exhibits 260, 261, 262, and 264 for identification. We would like to offer those into evidence.

The Court: Any objection.

1467 Mr. Kostelanetz: No objection.

The Court: They will be received.

(Government exhibits 260, 261, and 264 received in evidence.)

The Court: You may proceed and get the witness to identify such items as he can.

By Mr. Kostelanetz:

Q. Now, if you do not mind, I will stand over here. Maybe you could read the line and the amount, sir, which is written by Mr. Wentland.

Mr. Bittman: Your Honor, I object to Mr. Kostelanetz continuing to refer to "written by Mr. Wentland."

Mr. Bromley stated he does not know if Mr. Wentland wrote it and I object.

Mr. Kostelanetz: I object to counsel objecting.

The Court: May the Court intervene to say to the witness, identify if you can, those items which you can identify, and tell the reporter what you can identify and whose it is.

Is that satisfactory, Mr. Kostelanetz?

Mr. Kostelanetz: Yes.

The Court: All right.

Mr. Kostelanetz: Yes, sir. I think we were up to
1468 6-A.

The Witness: On line 6-A, it has "Business Income (Schedule C)."

The amount 4116.22.

And to the right of that is pencil notation "3720804" which apparently has been struck out by the person writing with the pen.

The Court: Now, can you identify that, sir?

The Witness: The pencil?

The Court: Can you identify what you just read for 6-A?

The Witness: Well, sir, that apparently—No, sir, I cannot.

The Court: You cannot identify it.

The Witness: No, sir.

The Court: Very well.

By Mr. Kostelanetz:

Q. Is it your handwriting, that 2,122? A. No, sir, it is not.

Q. Is it Baker's handwriting? A. No, sir, it is not.

Q. To the best of your knowledge, sir, did any other person except you, Mr. Baker and Mr. Wentland handle that return before the return was given over to Mr.

1469-71 Sandground to the Government? A. Yes, sir. Not as actually holding it out. This return, along with the other returns, was given to me by Miss Tyler, the secretary, when I stopped by and asked for my tax file.

Q. I see.

Is this Miss Tyler's handwriting? A. I do not believe it is, sir. It appears to be more like Mr. Wentland's than anyone else. I am saying I am no expert but I would say it was Mr. Wentland's.

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1472 Cross Examination (Continued)

By Mr. Kostelanetz:

Q. Mr. Bromley, I think when we stopped for lunch you had finished saying that Line 5-C which is the figure of \$2,116.22, opposite Business Income, that that at least from your non-expert viewpoint appears to be Mr. Wentland's writing; is that right? A. Line 6-A, sir.

Q. I am sorry, 6-A.

Now, is your testimony the same with regard to Line Number 7, which is \$18,116.22, and represents total? A. Yes, sir, that is correct.

Q. Is your testimony the same with regard to Line Number 9? A. It is, sir.

Q. How about Line Number 10, which is \$2,719.87?

1473 A. Yes, sir. That, and Line B of 10 also.

Q. That is Line A and B? A. Yes, sir.

Q. With regard to Line D, which is the amount of \$12,396.35, that appears to be Mr. Wentland; is that right? A. Yes, sir, it does.

Q. Now, with regard to Line 12, which is "Tax" opposite "Tax," \$2,838.91. Would you say that is—somebody wrote originally and then wrote over it; is that right? A. Yes, sir, that appears to have been written over at least once or twice, so I could not identify that.

Q. Right.

Then you have Tax Withheld, Line 2, Line 19-A, \$2,364.00, that looks like Wentland; is that right? A. Yes, sir, it does.

Q. Is the same thing for Line 19-C, which I guess is the total tax withheld, \$2,364.00? A. Yes, sir, that's correct.

Q. Wentland.

Now, you have, on Line 20, "Balance Due," Paid in full with this return, \$474.91. Would you say that looks like it has been written over but Mr. Wentland was in on it? A. I would assume that it is.

1474 Q. Then finally down at the bottom you have \$474.91, plus interest, \$474.91, at six per cent for 250 days, \$21.51, a total of \$49.42. That figure is all Wentland? A. I would assume so.

Q. Now, with regard to, I guess, Page 2 of the Return, which has contributions on it, and names of dependents, could you tell us what portion of it appears to be in the handwriting of Mr. Wentland and maybe you can identify it by line or designation, or some kind of— A. All right, sir.

I would say the first entry that appears to be Mr. Wentland's would be under the itemized deduction section of Page 2, that particular portion addressed to "Interest Expense," and on the line for home mortgage, it would be the amount of \$522.72.

Then apparently Mr. Wentland added that particular numeral with the others that had been written in and the total amount on the right hand column in the amount of \$153.40 would appear to be his.

Under Taxes, there is a writing, some writing in ink for the first word, written apparently by Mr. Baker in pencil, is Estate, or something which I cannot tell. Perhaps you can identify that word, but anyway there is a word
1475 written in ink, for the total amount in the right hand column of \$1,108.47. The total itemized deduction on the right hand margin of \$2,719.87 appears to be his.

Q. Now, with regard to Schedule C, could you tell us, sir, which part of this Schedule C appears to be in Mr. Wentland's handwriting? A. Within the writing as such that appears to be his—not counting these marks?

Q. Not counting particular marks? A. Not counting "tic" marks would be his writing on the bottom portion of the sheet under Schedule C-1, which is an explanation of Line 6, 12, 14, 25—shall I read this?

Q. No, why don't you just read the total? A. The total amount of \$6,777.15.

Q. And the eight lines or so which appear above the total, appear to be in Mr. Wentland's handwriting; is that right? A. Yes, sir, they do.

Q. Now, the "tic" marks—maybe large check marks, those were not put on by you, I take it? A. No, they were not.

Q. Could you recognize them as the accountant's 1476 check marks or "tic" marks? A. Well, I assume they are his.

Q. Neither you nor Mr. Baker made these kind of "tic" marks, I take it? A. No, sir, at least I don't.

Q. Now, with regard to the page entitled, Computation and Social Security Employment Tax, would it be correct to say that everything written on this page in ink, appears to be the handwriting of Mr. Wentland? A. Yes, sir, I would say so.

Mr. Kostelanetz: Is this in evidence?

Mr. Bittman: No, it is not, but I will offer Government's Exhibit 5 at this time.

Mr. Kostelanetz: No objection.

The Court: It will be received.

The Deputy Clerk: I will mark it.

(Whereupon, Government's Exhibit No. 5, previously marked for identification, was received in evidence.)

By Mr. Kostelanetz:

Q. Government's Exhibit 5 is the final Tax Return; is that correct, which was filed with the Internal Revenue Service; is that right? A. Yes, sir, that is correct. 1477

Q. It has on it a large stamp right in the front, Internal Revenue Service Received January 4, 1965, with remittance, Mail Room? A. Yes, sir.

Q. Now, is it correct, sir, that the final return, except for signatures is entirely in the handwriting of Mr. Wentland? A. Yes, sir, that is correct.

See here?

Q. Yes.

And Mr. Wentland wrote a letter on December 30, 1964, explaining in substance why your Return is late and made it a part of the Tax Return itself; is that right? A. Yes, sir. Filed with the Return.

Q. Is it correct, sir, that on the second page of this Return, is written under the following statement, "Under penalties of perjury I declare that I have examined this return including accompanying schedules and statements and to the best of my knowledge and belief it is true, correct and complete. If prepared by a person other than taxpayer, his declaration is based on all the information of which he has knowledge."

1478 Now, that contained your signature, December 30, 1964; is that correct? A. Yes, sir.

Q. I take it you can recognize your wife's signature? A. Yes, sir.

Q. And underneath that, in green ink, we have, Ernest John Wentland, Accountants and Auditors. Signed 30 December 1964.

Now, with regard to Schedule C, Line 1—maybe I can take the copy, you hold the original—is it correct that Line 1 reads: Gross receipts or Gross Sales, and opposite that you have the—the copy shows the amount of \$21,300; is that right? A. Yes, sir, that is correct.

Q. Now, is there any place in the form, sir, that is the Schedule Form 1040, where you are directed to enumerate the sources of your receipts? A. On the 1040 proper, sir?

Q. Yes.

I am sorry. I didn't mean to mislead you. Is there anywhere on Schedule C, Line 1, where there is a direction to enumerate the sources of your gross receipts? A. Not on Line 1, sir.

1479 Q. Now, is it correct, sir, that at that meeting late in December Mr. Baker said to you in substance that he wanted to have Mr. John Wentland, an accountant, to go over the proposed Return? A. Yes, sir.

Q. And I think, did Mr. Baker say that Mr. Wentland is a former Internal Revenue Agent and he is a very capable man, as far as taxes are concerned? A. To the best of my recollection it was something very, very similar to that, sir.

Q. Well, did he say—

Mr. Bittman: I object, your Honor.

The Court: I think the question is sufficiently answered.

By Mr. Kostelanetz:

Q. Did Mr. Wentland discuss with you and Mr. Baker the work papers which are in evidence and to the best of your recollection were you advised that everything done was done in the proper way? A. You are speaking now of the work papers and not of the rough draft of the Form 1040? Now, is that correct, sir?

Q. Well, I will withdraw the question, to make it absolutely clear.

1480 First of all, did you discuss the different work papers which you had identified here?

The Court: With whom?

Mr. Kostelanetz: Mr. Wentland, with Mr. Baker.

The Witness: I do not recall any specific discussion of the papers in general, of the work papers. Perhaps he was told what they were so that in the event he did have any questions, as he worked out the form or as he did it, that he could refer to them. But I don't recall any specific conversation about the work papers, sir.

By Mr. Kostelanetz:

Q. Well, did Mr. Wentland say to you and to Mr. Baker that everything that you had done was done in a proper way? A. As I recall the conversation that we had with Mr. Wentland, sir, it was directed mainly with respect to what would be Line 17 of the Schedule C, and at that time Mr. Baker informed Mr. Wentland that this is how he had been advised to handle it and Mr. Wentland paused for a second and then as I recall, he nodded.

Q. Well—this is Page 443—Line 6. In the Grand Jury, on June 3, 1965, were you asked this question:

“Question: Did you also discuss the five work papers which you previously identified?”

1481 “Answer: We did. I don’t remember what facet of it we did, but I remember we discussed a couple of items with him and to the best of my recollection we were advised by him that everything, rather, we had done it in the proper way.”

Was the question put to you and did you give the answer before the Jury? A. If that is—rather, apparently I did, sir.

Q. Is it correct, sir, that you told Mr. Wentland or Mr. Baker told Mr. Wentland in your presence that the monies which had come in to you, referring to U. S. Freight and First Western and some other sum, that \$500.00 there? A. Yes, sir.

Q. That this money which had come to you, you had given to Mr. Baker. You didn’t go into details, but that is what you told him; is that correct? A. Yes, sir, that is correct.

Q. And is it correct, sir, that the \$11,000 which appear—I think I showed you Exhibit 260. Here they are underneath—that the \$11,000 which were deducted on Schedule C, is the same \$11,000 Internal Marketing, U. S. Freight and First Western, which Mr. Wentland was told about? A.

Yes, sir, that is correct.

1482 Q. Yes. No question about it.

He saw this schedule because his handwriting is on it; is that right?

I am showing you Exhibit 260? A. Yes, sir; yes, sir.

Q. Now, did Mr. Wentland tell you, sir, in substance that since you had received the money you should report the receipts in gross receipts which is Line 1 of, I guess, Schedule C?

Mr. Bittman: I object to the question. What money?

The Court: Can you rephrase your question?

Mr. Kostelanetz: Yes.

By Mr. Kostelanetz:

Q. Did Mr. Wentland tell you in substance, sir, that it was in order to report in Schedule C the monies which you had received or handled if you will, from Internal Marketing, U. S. Freight, First Western, as part of your gross receipts in Schedule C? A. As I said, Mr. Kostelanetz, he had acknowledged it, he nodded.

Q. I see.

Well, did he tell you in substance, sir, that you can't get hurt disclosing receipts, and this is the same
1483 kind of advice which Mr. Wentland would give anybody; if you recall? A. I didn't hear your last remark.

Q. If you recall? A. Mr. Kostelanetz, he appeared to approve of this manner of handling it.

Q. I see.

And that applied not only to the gross receipts but to the deduction side and the selection of the line on which to take the deduction; isn't that true? A. By deduction line, are you referring to Line 17 of Schedule C?

Q. I guess so. A. This right here?

Q. Yes, sir. A. Yes, sir; yes, sir.

Q. Now, Mr. Bromley, did Mr. Wentland indicate in any way that he had any prior discussion with Mr. Baker concerning this Return? A. I don't recall it, sir.

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1484 By Mr. Kostelanetz:

Q. Would you read Lines 2, 3 and 4 and read that to yourself first and then look up and tell us whether that refreshes your recollection as to whether Mr. Wentland indicated he had any prior discussion with Mr. Baker about the preparation of this Return.

Have you finished? A. I am sorry, sir. How many lines did you ask me to read?

Q. Just lines 2, 3, and 4. That is all. A. Well, sir, I

think this is what I have just said, that there apparently had been no previous conversation.

Q. As far as you could observe it was all new to
1485 him; is that correct A. Yes, sir.

Q. Now, Mr. Bromley, at the time that you prepared this Return you considered the inclusion of these fees of \$11,000 as a proper inclusion in your Tax Return; is that correct? A. At the time I prepared my tax I considered those fees of \$11,000 as a proper item in the tax form. Is that the question?

Q. Yes, sir. A. Well, with Mr. Baker saying that his tax attorney advised him that this is the way to handle it, with Mr. Wentland acquiescing in that, and as long as I knew that this amount of money could not have been income to me, I was putting it in and getting it out of my Return. At least I was showing that at least the money had passed through my hands.

Q. In other words, you disclosed the fact that the monies had been received by you and paid out; is that right? A. Yes, sir.

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1490 By Mr. Kostelanetz:

Q. Mr. Bromley, is it correct, sir, that in making that Return you wanted to make the most complete, accurate Return as far as you, yourself, were concerned? A. Certainly.

Q. And at that time, at the time the Return was prepared as you understood it, monies which came in to you in the face of all of the checks, the money was received by you; is that true? A. Yes, sir, I had possession of them for awhile.

Q. Would you say, sir, that certainly, as of June 3, 1965, if you were to prepare that Return again you would do it, probably do it exactly the same way? A. Apparently so, sir.

Q. And that is what you told the Grand Jury; isn't that right? A. Yes, sir.

Q. When you were telling this to the Grand Jury on June 3, 1965, as of that date, you were certainly telling the truth to the Grand Jury? A. Yes, sir, I was.

• • • • •
1497 By Mr. Kostelanetz:

Q. On your direct examination by Mr. Bittman, yesterday, Mr. Bittman asked you a question concerning whether or not you received monies in your gross receipts
1498 from First Western Corporation, to the best of your knowledge— A. Mr. Kostelanetz, may I interrupt you for a moment, sir?

Q. Sure. A. I hadn't seen this for sometime and I frankly was looking at it when you started your question. Would you please start it again?

Q. Surely.

Mr. Bittman asked you at page 1356-7 of yesterday's testimony:

"Question: Now, Mr. Bromley, to the best of your knowledge did you receive \$2,500 in gross receipts from the United States Freight Company during 1963?"

And I believe your answer was:

"Answer: As receipts," there was an objection—and then your answer was:

"As receipts, no, I did not."

Now, Mr. Bromley, just so we know what we are talking about, the \$2,500 referred to in answer to the question are the \$2,500 in the five checks of the U. S. Freight Company during 1963. Did you physically receive those checks?
A. From?

Q. Did you physically receive those checks? Did
1499 you have them in your hand? A. Yes, sir.

Q. Right hand, left hand, both hands, right? Did you take the checks and convert them into currency? A. I did, sir.

Q. And then you had the currency; is that correct?

A. Yes, sir, I had possession of the currency.

Q. And in taking possession of the currency, I take it that for the time that it didn't go to Baker, you actually put it somewhere in your pocket or your wallet? A. I did, sir.

Q. In your personal possession; is that right? A. You are correct, sir.

Q. And then at some point, not immediate, necessarily, but at some point you delivered the \$2,500 to Mr. Baker, unless you borrowed \$500, as you may have testified in this connection, I don't remember? A. Yes, sir, I did.

Q. In this connection, in giving the reply to Mr. Bittman, did you consider, sir, in that reply, the views of the Commissioner of Internal Revenue to the effect that when monies—

Mr. Bittman: I object.

Mr. Kostelanetz: (Continuing)—so received—

1500 Mr. Bittman: Apparently what Mr. Kostelanetz is going to do is read some law. If it a question of law it is properly before the Court and not the Jury.

Mr. Kostelanetz: I think, your Honor, may we come up, and I would like to—

The Court: Yes, you may come up.

Mr. Kostelanetz: Thank you.

1500-A (At The Bench:)

Mr. Kostelanetz: Your Honor, yesterday at Page 1356, we made a very strenuous objection with regard to the receipt into evidence of a legal conclusion by the witness. With regard to what the witness is now defining to be gross receipts, your Honor, at page 1359, and believe me, we don't agree with it, but, your Honor, I think stated that you took it in part because apparently the witness is a lawyer.

At page 1360 you invited Mr. Williams to cross-examine with regard to this statement. It seems to me, if we are

going to have this fellow give us legal opinions, your Honor, as to whether something is properly in gross receipts in Schedule C or isn't, then it may be that he has some judgment with regard to it, and the Government is indeed calling him a some kind of an expert.

I just don't think we should have gone into this subject in the first place, but having gone into it, and having the Court's invitation to cross-examine, I confess, I think I ought to do it, just precisely this way.

Mr. Bittman: Your Honor, the fact of the matter is, and I believe the evidence so far has shown that Bromley never received any of this money from U. S. Freight, First Western Financial or Harvey Aluminum. All 1500-B he was doing was, at Baker's and John's suggestion, and apparently others, lending his name to conceal the transaction, that Baker received the proceeds. All these checks, your Honor, were sent to Baker's office. Bromley in every instance I believe has testified that he physically received these checks from Baker or Baker's secretary, Carol Tyler.

This is a question of fact. I believe what Mr. Kostelanetz is now trying to get into, is a technical question of law which I believe your Honor should resolve. The factual issue before the jury is, was this money sent to Bromley as Bromley's income because the top line, Mr. Kostelanetz, in Schedule C, says Gross receipts; the bottom line of gross receipts says Gross Income. The \$21,300 figure is the same on the top as it is on the bottom.

Mr. Kostelanetz: The witness can't help himself. Once you put it in gross receipts it winds up in the same place.

The Court: You undoubtedly will make a motion which is a legal question and the Court will then decide whether he agrees with this Opinion of the Commissioner. I think you brought it to my attention in your preliminary motion. At that time I did not agree it was the way to handle it. I was not bound by it.

1500-C When the motion is before the Court at the conclusion of the Government's case, you may go into this question again. I don't think it is important to put the issue to this man as to whether he had considered an Opinion of the Commissioner of Internal Revenue of 1920, or something like that. It is a question of law and it is the Court's responsibility, not this witness' responsibility.

Mr. Kostelanetz: Would Your Honor entertain the motion to strike the testimony of the witness given in answer to Mr. Bittman's question yesterday and believe me, I urge it, Your Honor, because I would hate to have these questions read to the Grand Jury with the witness coming down like Moses from the mountain and giving us law.

I think it ought to be stricken, Your Honor.

The Court: I will consider your motion. I will look at the transcript and see what I did. I will preclude your question in the context it is given at this time. You may argue that when the motion is presented to the Court.

Mr. Kostelanetz: At the moment, I understand I am precluded from—

The Court: From asking him if he considered an Opinion that the Commissioner of Internal Revenue handed down in 1920—was that the date of it?

Mr. Kostelanetz: I think so.

The Court: Yes, sir.

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1501 By Mr. Kostelanetz:

Q. Now, sometime in October—I thing 1963—my client left his employment at the United States Senate, is that correct? A. Yes, sir. That is correct, I believe.

Q. And on the first—on or about the first of November, 1963, the two special agents of the Federal Bureau of Investigation came to see you, Paul K. Brown, and Bernard

M. Mabes? A. That was approximately around the time they came to see me, sir.

Q. Now, at the time that these agents came to see you, you told them, did you not, that with regard to the five thousand dollars Redwood check, you kept all the money and did not give any of the five thousand dollars to either

Robert G. Baker or Maurice G. Hughett. Did you
1502 so tell the agents? A. That is correct, sir.

Q. And that statement was false, wasn't it, sir?
A. Yes sir, it was.

Q. At the time you made it you knew it was false? A. Yes, sir, I did.

Q. Did you tell the agents that you had utilized the proceeds of this five thousand dollar check to pay a bill you owed to the Carroll Arms Hotel?

(No answer.)

Q. That you had paid two and three thousand dollars in cash and that the bill paid for was your personal bill and that the payment was not made my Robert G. Baker or anyone else—that part was true, wasn't it? Substantially true?

The Court: What part are you talking about?

The Witness: Yes, sir.

The Court: You have read a lot of things into the record.

Mr. Kostelanetz: That two or three thousand dollars.

The Court: Suppose you ask the items separately.

By Mr. Kostelanetz:

Q. Is it correct, sir, that you told the agents that you had utilized the proceeds of this five thousand dollar check to pay a bill owed to the Carroll Arms Hotel in that you paid to that Hotel two or three thousand dollars in
1503 cash? A. Mr. Kostelanetz, I do not recall exactly what I told the FBI. I was not under oath to them. I was hoping they would go away. I was trying to underplay my part. I do remember discussing the Redwood

Bank with them. I told them I retained the complete five thousand dollars. As to the rest of what you are reading, sir, if it is a copy of their report, then apparently it is true, sir, but I do not specifically recall these matters. Your reading them, sir, is not refreshing my memory.

Q. In other words, it is true—if it is in the record it is true that you said it, but what you said is not necessarily true, is that it? A. That is a good play on words, sir. No, I—

Q. Let me ask the question—

Mr. Bittman: I object. Mr. Bromley should be permitted to finish his answer, Your Honor.

The Court: Had you finished your answer, sir, or do you have something to add?

The Witness: Frankly, I would like to take a look at the report. You are apparently quoting it and I am at a disadvantage of not seeing it.

The Court: Let him see it.

Mr. Kostelanetz: Of course. By all means.

1504 By Mr. Kostelanetz:

Q. I was going to ask you about this last sentence of the first full paragraph. Would you read it? A. Yes, sir. I have read it.

Q. Did you say to the FBI that you could not remember what you did with the balance of the proceeds of the five-thousand dollar check, but did not give any money to Baker or Hughett or Tucker or anyone else on behalf of these individuals? Did you state that to the FBI? A. I stated that I did not give any of the five thousand dollars to anyone else.

Q. Inclusive, specifically, of Mr. Baker? A. Very specifically of Mr. Baker.

Q. And that statement, when made to the FBI, is not true? A. That's correct.

Mr. Bittman: I object—asked and answered.

The Court Sustained.

By Mr. Kostelanetz:

Q. I am pointing to the last part. A. Yes, sir.

Q. Did you tell the FBI agents that you had never borrowed substantial cash from Robert Baker, nor had you loaned substantial cash to Robert Baker, and that
1505 Baker never did anything for you, business-wise, and— A. I never did anything for Baker.

Q. For Baker, business-wise? Is that statement false, sir? A. No, sir. I am sure I said it. I said it to Internal Revenue also, and to other investigative agencies.

Q. I say, is that statement false? A. Oh.

Q. The statement which I just read to you. A. The statement I made to them was false.

Q. On March 12, 1964, were you interviewed by Senate investigators James Ryan and Peter Hoehl? A. I was interviewed by investigators for the Senate Rules Committee, sir. The date I am uncertain of. But if that is the apparent date, then I will accept that.

Q. Did you at that time state to these investigators that you had no knowledge whatsoever concerning Baker's various financial and business dealings or that of Baker's associates? Do you recall that, sir—stating that to them? A. I imagine I did, sir.

Q. Do you deny making that statement? A. No, I do not deny it.

Q. And that statement, when made—that statement
1506 on March 4, 1964, was false too, is that correct? A. Yes, sir.

Q. Now, did there come a time when you were—when you met a gentleman named Mr. Rossetti, Joseph B. Rossetti? A. Yes, sir. That is correct.

Q. And he is a Special Agent of the Intelligence Division of the Treasury Department, is that right? A. I think he is with Internal Revenue, sir.

Q. He has been attending here in Court. Do you see him here today? A. I do, sir.

Q. Now, Mr. Rossetti interviewed you on April 29, 1964, is that correct? A. I assume it is, sir.

Q. Now, on the occasion of Mr. Rossetti's interview, you raised your right hand and swore to tell the truth, is that right? A. I do not recall raising my right hand. I did sign an affidavit or an instrument which he wrote in longhand.

Q. Did you tell Mr. Rossetti that you had known Mr. Baker since you came to Washington, D. C.? That you were pages together, and that over the years, "We exchanged personal loans which never exceeded a hundred dollars approximately?" A. Yes, sir, I did.

1507 Q. And that statement to Mr. Rossetti, that was false, too, wasn't it, sir? A. Yes, sir, it was false.

Q. Now, on November 19, 1964, were you interviewed by an investigator named Samuel J. Scott? Of the United States Senate Committee? A. I was interviewed by Mr. Scott. I assume the date is correct, sir.

Q. Now, on that occasion did Mr. Scott ask you to—about the Hughett check and the Redwood National Bank transaction?

The Court: Who was that first one, sir?

Mr. Kostelanetz: Hughett.

The Witness: Yes, as I recall sir. He did discuss, or ask me about the Redwood transaction.

By Mr. Kostelanetz:

Q. Did you tell Mr. Scott with regard to this transaction that you had called Mr. Baker off the floor of the Senate, endorsed a check to Mr. Baker, Baker then endorsed a check, took it to the disburser's office, cashed it, handed the five thousand dollars in cash in one hundred dollar bills to you, and you stated that Baker received no part of this money? A. I did, sir.

1508 Q. That is what you said to Mr. Scott? A. Scott. That is right.

Q. Did you tell Mr. Scott that the manner of cashing the check, rather than running it through your bank account

formally, was due to the fact that you did not want your wife to know about this money, particularly how you spent it—did you say that to Mr. Scott? A. I did, sir.

Q. Did you say to him that you wanted the money to pay a large bill, approximately three thousand dollars, at the Carroll Arms, that you went to Carroll Arms, that you paid \$2,500 to the manager, Tom Heslop, and that you wasted the remaining part of the five thousand dollars and used the remainder to buy items for the new house which you had purchased? As to that, sir—as to the last part that you had wasted the remaining \$2,500 and used it to buy items for the new house—

Mr. Bittman: I object to Mr. Kostelanetz repeating things over and over, then again. Let's move along.

Mr. Kostelanetz: Well, it is the witness who has been repeating these things to the Senate investigators.

Mr. Bittman: You repeated things at least three times.

1509 Mr. Kostelanetz: That's the way life is.

The Court: I will permit you to ask the questions, but I think it is rather repetitious.

Mr. Kostelanetz: I think my question is—

The Court: Perhaps you had better rephrase it and come down to the precise point you are interested by.

By Mr. Kostelanetz:

Q. Did you tell Mr. Scott, the Senate investigator, that out of that five thousand you paid \$2,500 to the manager of the Carroll Arms Hotel and the remaining \$2,500 you wasted and used to buy items for the new house you had purchased? Did you so state that to Mr. Scott? A. I distinctly recall the \$2,500 to the Carroll Arms. I recall purchasing articles for my home. Now, the wasting part I don't remember.

Q. All right. But you do not deny that you said it? A. Well, I think, sir, that that is a summary, or paraphrase, by Mr. Scott, Is it not, sir? A. Those are not direct quotes from me, are they?

Q. Well, Mr. Bromley, I have to ask questions—you have to give the answers.

The Court: You are asking him, sir, so suppose you show him the item from which you made up the question.

Mr. Kostelanetz: Does Your Honor want me to do
1510 this?

The Court: Yes.

Mr. Kostelanetz: All right.

By Mr. Kostelanetz:

Q. Would you be good enough, sir, now that your mind is refreshed—whether in fact you said to him that you wasted part of the remaining \$2,500 and used the remainder to buy items for the new house, “He had purchased,” isn’t that what you said to Mr. Scott? A. Mr. Kostelanetz, my answer is exactly the same as when you last asked it. I remember the \$2,500. I remember the items for my home. The wasting part I do not remember saying.

Q. But you— A. But I do not deny that. I am sure I did not say “wasted.” But really I would concede that I did waste a portion of it.

Q. My question is do you deny saying that to Mr. Scott? A. I have already not denied it, sir.

Q. You don’t deny saying that? A. No. No.

Q. Now, on January 4, 1965, were you interviewed by a representative of the Comptroller—is it the Comptroller of the Currency?
1511

Mr. Bittman: Comptroller of the Currency, yes.

Mr. Kostelanetz: Comptroller of the Currency, whose name I—I do not know his name.

Mr. Bittman: One would be John Nichol.

By Mr. Kostelanetz:

Q. A Mr. John Nichol? A. Assuming the date is correct. Yes, I was interviewed by two agents of the Comptroller’s office and I told them approximately the same story I told the other investigative agents.

Q. In other words, you told them in regard to this five thousand dollar Redwood Bank check that you went to the Disbursing Office, cashed it, and kept the five thousand dollars, is that about it? A. Yes, sir. That is correct.

Q. And it is correct that you said that? A. Yes, sir. I think I said it to every investigative body that I talked with.

Q. Now, at the time that you made these statements in 1964 and the first part of '65, you knew the statements were false? A. Oh, yes sir. I did.

Q. Now there came a time in October of 1964, when 1512 you appeared before a Federal Grand Jury, is that right? A. Yes, sir. That is correct.

Q. When you appeared before the Federal Grand Jury, you were sworn, I take it, in a fashion similar to the way you were sworn here? A. By here, you mean here in the Courtroom, sir?

Q. Yes. A. Yes, sir. That is correct.

Q. And in the course of that, were you asked to identify a certain letter which I take it is now a Government exhibit here?

Mr. Bittman: No, it is not a Government exhibit. We put the Redwood check in evidence.

By Mr. Kostelanetz:

Q. Were you asked to identify a certain letter which you caused to be sent? A. Yes, sir. That's correct.

Q. And is it correct, sir, that in sending the letter, the letter was officially typed by a young lady who was a secretary? A. That is correct, sir.

Q. And she typed that letter in the office of—was it Mr. Baker? A. Yes, it was—well, it was Miss Ty-
1513 ler's office, and in Mr. Baker's suite of offices.

Q. Now, at the time you testified before the Grand Jury, were these questions asked of you, and did you give these answers? Question:—

Mr. Bittman: Objection to this type of question again, Your Honor.

Mr. Kostelanetz: This is a different theory.

The Court: The Court has ruled on that.

Mr. Kostelanetz: What?

The Court: The Court has ruled on that type of procedure. You may ask the question in your own way and you can refer to prior testimony if you think the answer is inconsistent with the prior testimony.

By Mr. Kostelanetz:

Q. At the time, sir, that this letter was typed, the initials "G. A." appeared on that letter, is that right? A. That is correct, sir.

Q. And is it a fact that these were initials which you had just created or put down, or was that the initials of a living person? A. The initials which appear on the bottom lefthand part of the letter were initials of a real person who I denied to the Grand Jury on October 26 had typed the letter in order to keep her out of this 1514 entire investigation. I said that I typed the letter, which was a false statement to the Grand Jury on October 26.

Q. You said to the Grand Jury, did you not, "These are just initials—"

Mr. Bittman: I object, Your Honor.

Mr. Kostelanetz: Your Honor, I made the preliminary—

The Court: I think he has covered the matter in his response. Do you have to do it twice, sir?

Mr. Kostelanetz: I want to make a showing, Your Honor.

The Court: He said he made a false statement to the Grand Jury to keep the girl's name out of investigation.

By Mr. Kostelanetz:

Q. You made up an answer, is that correct, sir? A. What do you mean I made up an answer, sir?

Q. I say you made up an answer—you know people write letters and just put down initials to— A. No, sir. I did not make it up. When I first started writing legal

letters as an attorney, I did it quite often. Down at the bottom I would put my initials and just put any initials that came to mind and that is a rather common practice.

Q. But did you do it in the Grand Jury when you were asked specifically, "Who is G. A.?" and you answered, "These are just initials that I put down?" That is the fact. That is what you told the Grand Jury.

Mr. Bittman: I object, Your Honor. We have been over it.

The Court: I think we have been over it sufficiently. I will sustain the objection.

By Mr. Kostelanetz:

Q. You knew at the time you were giving the answer, you were swearing falsely?

Mr. Bittman: Objection to the question.

The Court: Sustained. He has answered that.

By Mr. Kostelanetz:

Q. Is it correct, sir, that with regard to your present testimony, that you had made false statements to Government officials, on the first day of November to FBI agents—

Mr. Bittman: I am going to object to this. If Mr. Kostelanetz is going to recap the last half hour's testimony, I am going to object to it.

The Court: I will sustain that.

Mr. Kostelanetz: All right.

By Mr. Kostelanetz:

Q. Would it be fair to say, sir, that sometime after mid-February, 1965, you advised the prosecution that you had made false statements or false swearing or perjury to Mr. Rossetti on at least—

Mr. Bittman: I object to that legal conclusion of Mr. Kostelanetz, and I object to the form of the question, Your Honor.

The Court: Sustained.

By Mr. Kostelanetz:

Q. Is it correct, sir, that since mid-February, 1965, you have advised—you have told the prosecution that you had made false statements—?

Mr. Bittman: I object to this on the grounds of relevancy.

Mr. Kostelanetz: Oh.

The Court: You may ask the question.

Mr. Kostelanetz: Thank you.

The Witness: Would you repeat it, sir?

Mr. Kostelanetz: Would the court reporter read it back, please?

(The court reporter read back the last question.)

The Witness: I do not recall it specifically being them, Mr. Kostelanetz. I think it is rather obvious isn't it, Mr. Kostelanetz, that I did. And I am sure they knew differently.

1517 By Mr. Kostelanetz:

Q. Now, is it obvious to you, sir, that each and every one of those false statements is punishable by a maximum penitentiary sentence of ten years?

Mr. Bittman: I object to this again, Your Honor. Why don't you add them up?

The Court: Sustained.

Mr. Kostelanetz: That is ordinarily the prosecutor's job. I will take one at a time.

The Court: I will sustain the objection.

By Mr. Kostelanetz:

Q. You knew, did you not, that each and every one of these false statements is punishable by a penitentiary sentence?

Mr. Bittman: Objection, Your Honor.

The Court: Sustained.

Mr. Bittman: Your Honor, you just sustained the objection, and Mr. Kostelanetz repeated it again.

The Court: Yes, Mr. Kostelanetz, I think we have been into this in sufficient particularity.

By Mr. Kostelanetz:

Q. Mr. Bromley, as a lawyer, you know, do you not, that lawyers are disbarred for perjuries and felonies, for making false statements to Government officials?

1518 Mr. Bittman: I object again, Your Honor.

The Court: Sustained.

By Mr. Kostelanetz:

Q. Mr. Bromley, are you disbarred?

Mr. Bittman: I object, Your Honor.

The Court: Sustained.

By Mr. Kostelanetz:

Q. Mr. Bromley, have you been indicted for any—all or any of the statements which you have testified to here by any Grand Jury of this district or any other district?

A. Unless it's happened within the last two days, sir, not to my knowledge.

Q. If I may assist the witness. It has not happened within the last two days. We can have a concession on that.

Mr. Bittman: Agreed to.

The Court: Thank you, gentlemen. I am glad to have a concession.

By Mr. Kostelanetz:

Q. Is it accurate to say, sir, in substance, that you said to the prosecution in this case, "I don't want any promises, I want performance?" Did you say that? I want performance. I don't want to be indicted and I want to keep

my license as a lawyer. Did you say that in substance to the prosecution? Not in those exact words, but in substance? A. Not even in substance, sir.

1519 Q. Now, when you hired Mr. Sandground, you were somewhat apprehensive of indictment, is that correct? Is that

right? A. At the time I retained Mr. Sandground I was well aware of the investigation which was in process. I knew that I would play a certain role in that investigation. I knew that it was completely within the realm, not of probability, but of possibility, that if I was not careful I could come out with some type of indictment for some possible offense.

Q. And is it correct, sir, that after you consulted and retained Mr. Sandground, you were not so much apprehensive? A. Mr. Sandground had had—

Q. Would you answer that question, yes or no? A. No, sir, I cannot answer that question yes or no.

Mr. Kostelanetz: If Your Honor please, as I have in mind yesterday's testimony at 1146, and I need an answer in this form, Your Honor.

The Court: Mr. Bromley, after you retained Mr. Sandground, were you equally apprehensive, less apprehensive, or what? A. I was less apprehensive.

The Court: All right. You have your question and 1520 your answer.

By Mr. Kostelanetz:

Q. Did you, sir—I will withdraw that. Is it correct, sir, that on February 15—I know we had it before. I am just trying to fix the date. You first saw the prosecution here, February 15, 1965? A. That would be the approximate date, sir.

Q. And in April, 1965, you went to see my client and—

Mr. Bittman: Your Honor, I object to this. It is all repetitious.

The Court: It appears to be. Let's seek to avoid repetition.

Mr. Kostelanetz: Very well.

By Mr. Kostelanetz:

Q. In May of 1965, did you entertain Mr. and Mrs. Baker at the Congressional Country Club for dinner?

Mr. Bittman: I object. There is no relevancy to this, Your Honor.

The Court: I will permit the question.

The Witness: I did not hear the date you said, sir, but I am sure that it is approximately correct.

Mr. Kostelanetz: In the summer of '65.

The Witness: Yes, sir.

By Mr. Kostelanetz:

Q. And then in the early summer of '65, did you have my client and his family over to your house for a cookout? A. I don't recall the date that you mention, but in 1965 I am sure that they did come over for a cookout, sir.

Q. And in the fall of 1965, all of you folks went to a football game after dinner at the 1116 Club or something like that. A. After breakfast, sir. It was played in the afternoon. We had breakfast at the 1116 Club and then went to the game.

Q. And in other words, November, Thanksgiving of 1965. Thanksgiving by the calendar was November 25, 1965. So on or about Thanksgiving, did you approach Mr. Baker and ask him whether he couldn't advance you two thousand dollars?

Mr. Bittman: Unless that exhibit is marked, Mr. Kostelanetz, I am going to object to it.

Mr. Kostelanetz: I will show you it first.

Mr. Bittman: I would also like to have it marked.

Mr. Kostelanetz: It is a pleasure to have it marked. Will the Deputy Clerk mark it, please.

The Deputy Clerk: Defendant's Exhibit Number Ten for identification.

(Whereupon, the document referred to above, Defendant's Exhibit Number 10, was marked for identification.)

1522 By Mr. Kostelanetz:

Q. I show you Exhibit 10 for identification and ask you whether on November 26, 1965, you went to Mr. Baker and

got two thousand dollars from him and put the proceeds in your bank account? A. Yes, sir, apparently I did.

Q. The signature on this two thousand dollar check is yours? A. Yes, sir. It is.

Q. The endorsement I should say. And this was nine months after you started testifying in this case? A. Yes, sir. It was.

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Redirect Examination

By Mr. Bittman:

Q. Now Mr. Bromley, Mr. Kostelanetz asked you a question this morning and read you questions and answers in the Grand Jury about eleven thousand dollars in loans. A. Yes, sir. That is correct.

Q. That you testified to in 1961 and 1962, and as I 1523 recall your answer was that if you said it you were in error and it was probably clarified? A. Yes. That is correct.

Q. I now ask you if at page 5411 you were asked these following questions by men and gave me the following answers. Now, did you tell me to the best of your recollection in the Grand Jury that when I asked you whether or not you had borrowed eleven thousand dollars from 1960 through 1962, you told me that that was incorrect? A. Yes, sir. That is correct.

Q. And you did tell me that it was approximately three thousand dollars, did you not? A. Yes, sir.

Q. In the Grand Jury? A. Apparently so, sir.

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1524 By Mr. Bittman:

Q. Mr. Bromley, what if anything did you purchase in August of 1959? A. I purchased two units of MGIC stock.

Q. For how much money? A. \$1,150.

Q. From whom did you receive the money? I borrowed a thousand dollars from my mother and put up the

other \$150, which the units—just before that was approved by SEC. Therefore, they were selling in units rather than in shares—were selling for \$575 a piece.

Q. You purchased two units, is that correct? A. Yes, sir.

Q. To whom did you give the money? A. To Mr. Baker.

Q. What, if anything, did Mr. Baker tell you when you gave him the money? A. He said he would like to
1525 retain the stock, or to purchase it in his name, so that in the event he needed to, he could pledge it for a loan as such. And he asked me if that would be all right, and it was. I gave him my consent.

Q. Have you ever seen the stock since? A. Well, I have never seen the stock.

Q. Ever received any proceeds from the stock, dividends, et cetera? A. I have not—no, sir, I have not seen any dividends or anything.

Q. Did Mr. Baker ever state to you what the value of that stock was at any particular time? A. Yes, sir.

Q. What did he state to you, and when? A. Oh, it was a couple of years or so ago. It was worth in the vicinity of \$30,000.

Q. And did you have a conversation with Mr. Baker, Mr. Bromley, concerning this stock and the loans that you had received from Mr. Baker? A. Yes, sir.

Q. To the best of your recollection, when did you have those conversations? A. We discussed the way that we would handle the moneys that he was advancing to me, as to whether to count it as on the stock or as a loan.
1526 We decided at that time to just consider it a loan, and when the day came for an accounting between the two of us as to what he had advanced me and what the stock was worth, then we would just work out the difference.

Q. Have you ever had such an accounting? A. No, sir, we have not.

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1527 ("Did anyone in your presence, Mr. Bromley, state to Mr. Wentland the conversation that you had with Mr. Clifford Jones and Mr. Baker in Las Vegas April 21 of 1963 as to show how that money should be handled?")
The Witness: No, we did not.

By Mr. Bittman:

Q. Was there any conversation, Mr. Bromley, in your presence which related as to how the United States Freight money should be handled? A. No, sir.

1528 Q. Was any statement made in your presence to Mr. Wentland to the effect that all of the checks from United States Freight Company, and First Western Financial, were sent to defendant Baker's office and given to you only to cash for Baker, and that the proceeds were returned to Baker?

Mr. Williams: Objection, Your Honor.

The Court: Overruled.

By Mr. Bittman:

Q. Was such a statement made? A. No, sir. Not as such. We didn't go into any details at all.

1545 (In Open Court:)

Whereupon,

J. Allen Frear, Jr.

witness called for examination by counsel for the Government, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your name? A. J. Allen Frear, Jr.

Q. Where do you reside? A. Dover, Delaware.

Q. And what is your present business or occupation?

A. Semi-retired, part-time with a bank.

Q. And you are a former United States Senator from the State of Delaware, are you not? A. Yes.

Q. Senator, what years did you serve in the U. S. Senate? A. 1949 to 1961.

Q. After you left, the Senate, Senator, did you become a Commissioner of the Securities & Exchange Commission? A. Yes.

1546 Q. During the period of time that you were

United States Senator, did you know the defendant, Robert G. Baker? A. Yes.

Q. Do you see him present in the Courtroom? A. Yes.

Q. Directing your attention, Senator, to August 21, of 1963, on that particular day do you recall a conversation with Mr. Baker? A. Yes.

Q. Would you please state to the court and jury what, if anything, occurred on that date? A. To the best of my knowledge around noon of that day I received a telephone call from the Hill, from either Mr. Baker or Mr. Baker's office, that there was a person in the office that he, Mr. Baker, would like to bring over; and I said that I was coming up to the Hill, probably for lunch, would be glad to stop by, which I did; and that when I stopped in, Mr. Baker's office, Mr. Baker introduced me to a Mr. —And I will have to be supplied with the man's name, I am afraid; it was the United States Freight Company's president.

Q. Mr. Morris Forgash? A. Forgash, yes. Mr. 1547 Baker introduced me to Mr. Forgash and said that he had a problem which perhaps I could help; and I said all right, if there was anything I could do I would be glad to do it. Mr. Baker then left the room. Mr. Forgash stated his problem—

Mr. Williams: We object to it, what was said outside—
The Court: Sustained.

Mr. Bittman: This was an S. E. C. problem, was it not?

The Witness: This was.

Mr. Williams: Your Honor—

The Court: I sustained the objection.

By Mr. Bittman:

Q. Did Mr. Baker state to you what Mr. Forgash's problem was? A. He told me that he was—I don't recall if he told me he was President of the U. S. Freight Company but he was a member and an officer of the U. S. Freight Company, and that his problem had something to do with the Securities and Exchange Commission.

Q. I see.

I have no further questions.

Mr. Williams: I have no questions. Thank you very much.

1581 Mr. Hansen: It has been stipulated between the parties that certain exhibits which I will identify and which are deposit slips are in Mr. Baker's handwriting and those exhibits are Government Exhibits No. 75, 77, 81, 113, and 125; and with respect to Government Exhibits 130 and 132 it has been stipulated that the deposits reflected on the deposit tickets were deposits to an account of Mr. Baker's.

Mr. Bittman: I have a further stipulation, Your Honor, between the parties. That is, if James F. Oosterhaus were called upon to testify as a witness for the Government that he would testify as follows: That he is Commercial Manager of the Chesapeake and Potomac Telephone Company, Washington, D. C., and in that capacity he has custody and supervision of the books and records maintained in the normal course of business. That on January 10, 1964, Telephone Number, CO 5-0439 was installed
1582 at 2000 P Street, N. W., Washington, D. C., in the name of Robert G. Baker; and that this telephone

number remained in service as described until June 1, 1965. That, on April 13, 1964, a telephone call was made from telephone number 265-0439, Washington, D. C., to telephone number, 382-0589, Las Vegas, Nevada, person-to-person, to Cliff Jones, attorney, Cliff Jones, from Baker, and that this call lasted a total length of six minutes. It is further agreed that telephone number 382-0589, located in Las Vegas, Nevada, was listed in the name of Clifford Jones, on April 13, 1964.

1584 The Court: Ladies and Gentlemen of the Jury, it is agreed by and between counsel that you may hear at this time the transcript of the testimony of Mr. Francis, which was taken outside of your presence when that witness was here earlier. The reason it was taken outside of your presence is that testimony of that kind as part of the conspiracy, cannot be received in evidence until the conspiracy has been established prima facie. That now having been done, it has been agreed by and between counsel that you may hear this portion of Mr. Francis' testimony which you did not hear when he was on the witness stand.

Mr. Hansen: Ladies and Gentlemen of the Jury, the witness, William W. Francis, is President of First Western Financial Corporation, Las Vegas, Nevada. His testimony which I wish to read is as follows, on Direct Examination, Questions by Mr. Hansen:

(reading) "Q. Mr. Francis, I believe you testified yesterday that you had a conversation with Mr. Clifford Jones in about June of 1964, is that right? A. That is correct.

"Q. And I think the question I asked you was—and I think you testified that was on the telephone—a telephone conversation? A. Yes.

"Q. I think my question to you was: What did
1585 you say to Mr. Jones?

"The Witness: I told him that I had been referred to him as to whether or not the invoices that I had

received subsequent to my letter to Mr. Bromley should be paid and he told me that he would call me back.

"Some time later he called me back and said that the time had been extended an additional four months and that I should pay the invoices.

"Q. Are those the invoices that you have identified as Government's Exhibits 167, 168 and 169? A. Yes, sir.

"Q. Mr. Francis, the letter to Mr. Bromley you referred to just now, was it Government Exhibit 172? A. Yes, sir.

"Q. Which is a letter dated March 18, 1964? A. Yes, sir.

"Q. Subsequent then to your conversation with Mr. Jones, that you have testified about, did you issue to Mr. Bromley the checks which are identified as Government Exhibits 183 and 184? A. Yes, sir."

And then there is cross examination.

Mr. Williams: You may read it.

1586 Mr. Hansen: All right.

On Cross Examination, by Mr. Williams:

(reading) "Q. As I understand it, Mr. Francis, in March of 1964, you wrote to Mr. Bromley and told him that you had had a pleasant association with him but that you didn't require his services further, is that correct? A. Yes, sir.

"Q. Did you, at that time, have in your possession, any unpaid invoices from Mr. Bromley? A. No, sir, I don't believe I did.

"Q. And it was subsequent to that letter, that you received what has been identified as Government's Exhibit 168 for the monthly retainer for March, is that correct? A. I believe so.

"Q. And that was in the amount of a thousand dollars? A. Yes, sir.

"Q. Now, you didn't pay the March retainer, is that correct forthwith? A. I don't believe I did. Apparently not.

"Q. In other words, you took the position you had terminated his services and therefore your initial 1587 decision was not to pay the invoice dated April 21, 1964, for services rendered in March of 1964, is that right? A. Right.

Q. And then subsequently you received a statement from Mr. Bromley dated May 11, 1964, which is Government's Exhibit 167, and in this particular invoice he lumped two months of payments, did he not, bill you for March and April? A. Yes, sir.

"Q. So that accounted for this invoice being two thousand dollars, is that correct? A. No, I believe that—or, at least my interpretation of what occurred is that this was March, this should have been April, and May, and this was June."—(witness points)—"This may read March and April but I assumed that it was for April and May.

"The Court: Excuse me, gentlemen. For the record, Mr. Francis, when you say 'this,' will you repeat your testimony so we will know which exhibit you are referring to?

"The Witness: Yes, sir.

"Exhibit 167 reads March and April but Exhibit 168 reads March.

"By Mr. Williams:

"Q. At the time you received Exhibit 167, dated 1588 May 11, 1964, you hadn't paid the March retainer had you? A. No, sir.

"Q. That exhibit, namely, Government's Exhibit 167, invoices you for services in March and April, is that correct? A. Yes, sir.

"Q. And, thereafter, you received in July, as indicated by Government's Exhibit 169, specifically on July 6, 1964, an invoice for one thousand dollars for June, is that correct? A. Yes, sir.

"Q. As I understand it, on June 3rd, you issued a check in the amount of three thousand dollars payable to Mr.

Bromley, and that was to cover, was it not, Mr. Francis, the two invoices marked 167, Government's 167, and Government's 168? A. Yes, sir.

"Q. That was a three thousand dollar payment to Mr. Bromley covering services which he delineates to have been performed in March and April 1964 but which you construed to have been performed in March, April and May, 1964, is that right? A. Yes, sir.

1589 "Q. And that is the reason that you gave the three thousand dollars on June 3, 1964; it was for three month's services? A. Yes, sir.

"Q. March, April and May of 1964. Then after you received invoice No. —, Government's Exhibit 169, an invoice dated July 6, 1964, for services in the month of June, 1964, you issued a check in the amount of one thousand dollars, is that right? A. Yes, sir.

"Q. And that check is Government's Exhibit 184, is that correct? A. Yes, sir.

"Q. And Government's Exhibit 184 was paid to cover the invoice designated as Government's Exhibit 169, right? A. Yes, sir.

"Q. And that was the last check, I take it that you paid to Mr. Bromley and when I say "you" I talk about First Western Financial Corporation. A. Yes, sir.

"Q. That was the end of the matter, is that correct? A. Yes, sir.

"Q. And on a recapitulation, is it accurate that you paid Mr. Bromley \$8,000 in 1963? And \$6,000 in 1590 1964? A. I couldn't say that. I can't say that for a fact without seeing some documentation.

"The Court: Gentlemen, are the years mentioned the subject of a stipulation?

"Mr. Hansen: No, Your Honor.

"The Court: \$8,000 in 1963. \$6,000 in 1964.

"Mr. Hansen: I believe that is right, Your Honor. But the checks will speak for themselves once they are in evidence.

"Mr. Hansen: I can give you the figures right now, Your Honor.

"The Court: It might save a little time later on.

"You and Mr. Williams confer on that and perhaps we can get an agreement as to the figures.

"Mr. Hansen: \$8,000 in 1963, Your Honor; and \$6,000 in 1964.

"The Court: There is agreement on that, then, gentlemen. Very well."

Then there is "Redirect Examination" by Mr. Hansen:

"Q. Referring to the telephone conversation you had with Mr. Jones, which you have testified about, and which you had in about June of 1964, did you have any conversations with him concerning the period of the 1591 initial retainer agreement—with Mr. Bromley—I mean the length of the initial retainer agreement.

A. Well, only to the extent that I told him that I understood that it was for a 10-month period and that I had received these additional—or, at least the one additional invoice. But that is all.

"Q. Was that additional invoice you received an invoice beyond that 10-month period, then? A. Yes, it was."

And that concludes the testimony, Your Honor.

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1592 (At The Bench:)

The Court: After using the word, "prima-facie," I was confronted with the fact in my own mind we may not have Latin scholars on the Jury and I don't want to mislead the Jury in this regard, and you gentlemen have any suggestions as to further implementation of that, so that they will understand the rule is that the Government must at least preliminarily establish— But, the ultimate finding as to conspiracy is up to them?

Mr. Williams: This, of course, disturbed us, Your Honor, and we were going to call it to Your Honor's attention.

The Court: I think now is the time to do something.

Mr. Williams: I was trying to think out how that could be resolved best so that they would not get the impression that Your Honor feels that a conspiracy case has been made here. Because whatever your feeling may be I am sure you don't want to tell the Jury that at this point.

The Court: No.

Mr. Williams: I really have not formulated in my own mind the way to do it, and I am open to any suggestion anyone has.

The Court: I think my statement is correct.

Mr. Williams: Certainly, legally correct.

The Court: Legally correct. I am not so sure
1593 they understand the meaning of prima-facie. So
at this time, if you gentlemen wish me to, I will
tell them in words that seem perhaps more understandable.

Mr. Williams: I think the best way to resolve this, Your Honor, is to tell them that what you said previously is perfectly consistent with what you have been telling them from the beginning of this trial, that they have heard only the prosecution's side of this case and that they have not heard the defense and that they should keep a completely open mind until they have heard all of the evidence and the instructions from the Court.

The Court: All right.

Mr. Williams: Does that sound like a solution to you?

Mr. Kostelanetz: Yes.

Mr. Williams: I think that is the simplest approach.

(Whereupon, the Bench Conference was terminated.)

1594 (In Open Court:)

The Court: Ladies and Gentlemen of the Jury, before Mr. Hansen read this testimony, the Court explained to you its position with reference to this testimony, and indicated to you that Mr. Francis' testimony had to be taken out of your presence because at that time no evi-

dence of a conspiracy had been established. Now, whether ultimately a conspiracy is established to your satisfaction, of course, depends on all the evidence. That is to say, you should not make any determination based solely on the evidence from the prosecution. That is what I have been telling you all along. Keep an open mind. And you are the fact-finders in this case. All the Court wished to indicate to you was that the Government had put in some evidence, which preliminarily showed that there was a conspiracy, but that finding is yours, not mine. And it is to be based on all of the evidence, not only the evidence for the Government but the evidence for the defendant as well. And after you have received instructions in the case and heard argument of counsel.

Mr. Williams: Your Honor, before the next witness comes in, may we come to the Bench, Your Honor.

The Court: Yes, sir.

(Whereupon, a conference at the Bench was held.)

1595 (At The Bench:)

Mr. Williams: Your Honor, I am sorry, Your Honor, I have to make this observation. But I don't think that helped us really. I really don't. I am sorry there has been reference to the Court's preliminary finding. That is what disturbed us in the first instance.

The Court: Well, I think the Court has to make a determination before the Court lets in this evidence.

Mr. Williams: I think so but I don't think the Jury should be told that, Your Honor, and we want to solve this problem and it may be that we can figure a way to solve it, but I am disturbed and Mr. Kostelanetz is disturbed at the underscoring of a preliminary finding by the Court, that a conspiracy exists. I would have preferred, of course, that the evidence just be received, that is all, without any comment from the Court, which I think would have been the appropriate way to do it.

The Court: Well, you may be correct in that. In my observation, a recent Opinion of the Court of Appeals has indicated that the Court of Appeals looks with favor upon the Trial Court at least indicating to the Jury the purpose of putting in certain evidence. And the limitations imposed upon that evidence. Here, of course, 1596 this jury did not hear this witness testify and the reason it didn't was that I think it is fairer to the defense to require the Government to establish the conspiracy before these overt acts are received. That is why I did it. There are many courts that have taken a different view. They have allowed it to go in subject to connecting up of the evidence. That could have been done. The position I took was in order to do what I thought was the fairest thing to the defendant.

Mr. Williams: Your Honor, then I would like to say that when we open our defense, I would like to simply say two sentences, that what you have heard now is the prosecution evidence. You are now hearing from the defense for the first time.

The Court: Of course. They know that. You said at the outset, or I said for you, that you wished to reserve your opening statement until you were about to present your case.

Mr. Williams: Your Honor, incidentally told them they should keep an open mind at the outset of the case. I don't know whether you remember this or not but yesterday when they were going out at lunch, you said, Look, I want you to keep an open mind and not discuss this among yourselves. You told them this a couple of times, which I think excellent.

1597 The Court: I seek to tell them that at the beginning of the case. I think we are confronted with a different situation here than when the Jury separates and goes along with the normal experience. They talk to their families; they talk to their friends, and everything else. Under those circumstances you have to be

very careful to instruct them every time they leave. Here it is somewhat different. One never knows to the extent to which the instructions are followed.

Mr. Williams: The problem is they don't have anything else to talk about much. They shouldn't be talking about the case.

The Court: They shouldn't be talking about the case.

(Whereupon, the Bench Conference was terminated.)

1598 Whereupon,

Stanley L. Sommer

witness called by counsel for the Government, having been duly sworn according to law, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

Q. Sir, would you please state your name? A. Stanley L. Sommer.

Q. Please spell the last name for the Court Reporter. A. S-o-m-m-e-r.

Q. Where do you reside, Mr. Sommer? A. In Washington, D. C.

Q. What is your present business or occupation? A. I am in the public relations business.

Q. Do you represent, among other clients, United States Freight Company, located in New York City? A. I do.

Q. Was Mr. Morris Forgash President of the United States Freight Company until a few months ago when he passed away? A. Yes, sir.

1599 Q. You knew Mr. Forgash? A. Very well, yes, sir.

Q. You also know the defendant, in this case, Mr. Robert G. Baker? A. I do.

Q. Do you see him present in the courtroom? A. Yes, sir.

Q. Directing your attention, Mr. Sommer, to approximately July 1963, did you have occasion to have a conversation with Mr. Forgash? A. Yes, sir.

Q. Where did that conversation take place? A. Here in Washington.

Q. Now, subsequent to the conversation that you had with Mr. Forgash, did you have conversation with Mr. Baker? A. I did.

Q. Where did that conversation take place? A. In Mr. Baker's office.

Q. Was anyone else present other than yourself and Mr. Baker? A. No, sir.

Q. Would you please state to the Court and the Jury, Mr. Sommer, to the best of your recollection what conversation took place at that time? A. I had suggested to Mr. Baker that since Mr. Forgash was interested in acquisitions and investments, and Mr. Baker seemed to know a good many people who were involved in this sort of thing perhaps I could get Mr. Forgash to hire Mr. Baker to represent him in these endeavors.

Mr. Baker thought that we would be able to arrange this, and I—we agreed on a fee of five hundred dollars a month.

Q. Do you recall who mentioned the fee initially? A. I think I asked Mr. Baker how much he would charge, and I think that is the way it worked out.

Q. What is the next thing that happened, Mr. Sommer? A. I told Mr. Forgash that—

Q. You had a conversation with Mr. Forgash? A. With Mr. Forgash.

Q. You are not permitted to testify as to what conversation you had with Mr. Forgash outside the presence of Mr. Baker. In any event, you did have a subsequent conversation with Mr. Forgash? A. I did.

Q. Then did you have another conversation with Mr. Baker? A. I did.

Q. Would you please state to the Court and Jury what that conversation was? A. I told Mr. Baker I had talked to Mr. Forgash, and Mr. Forgash had

agreed to the five hundred dollars and that we would hire him for the purposes stated. Mr. Baker then told me that he would like the money paid to Mr. Bromley.

Q. Mr. Wayne L. Bromley. A. Yes, sir. He told me they did this in a number of cases, and this was the way he wanted it handled.

Q. I see. Subsequently, did you send a letter to Mr. Forgash? A. Yes, sir.

Q. And I now show you Government Exhibit 187, which has been received into evidence, and ask you if that is the letter that you sent? A. Yes, sir.

Mr. Bittman: Your Honor, at this time, I would request permission of the Court to read this letter to the Jury.

The Court: Does Mr. Williams have a copy?

Mr. Bittman: I am sure he does, but I will show it to him.

The Court: It has been received in evidence?

Mr. Bittman: Yes, sir.

The Court: You may read it.

1602 Mr. Bittman: It is on the stationery of Public Relations, S. L. Sommer & Associates, dated August 2, 1963. It is addressed to Mr. Morris Forgash, President, United States Freight Company, 711 Third Avenue, New York.

"Dear Morris:

"I am attaching a communication and a bill from Wayne Bromley. Bobby suggests that we handle the arrangement in this manner.

"Sincerely,

"Stan."

Underneath "Stan" is S. L. Sommer.

By Mr. Bittman:

Q. When you sent this letter, Mr. Sommer, to Mr. Forgash, did you include any enclosure, sir? A. Yes, sir, I did. I enclosed a bill and a letter.

Q. And from whom did you—I will show these to you, sir. Government's Exhibits 188 and 189—which have been introduced into evidence—and ask you if those are the attachments which you sent to Mr. Forgash as part of your letter? A. They are.

Q. And from whom did you receive those two exhibits? A. Carol Baker.

Q. Carol Tyler? A. Tyler. I am sorry.

1603 Mr. Bittman: At this time, Your Honor, I would like to read these exhibits to the Jury.

The Court: They are in evidence?

Mr. Bittman: They are in evidence.

The Court: All right, show them to Mr. Williams.

Mr. Bittman: First is a letter on the stationery of Wayne L. Bromley, Attorney-at-Law, 605 Headquarters Building, 2000 P Street, N. W., Washington 6, D. C., dated August 1, 1963.

“Mr. Morris Forgash,

“President of United States Freight Company

“711 Third Avenue,

“New York, New York

“Dear Mr. Forgash:

“This will confirm our arrangement whereby you have retained me in a legal capacity for an indicated period subject to cancellation by either party at the rate of five hundred dollars per month.

“I am enclosing the bill and will bill you monthly hereafter.

Sincerely yours,” And then there is a signature, purporting to be Wayne L. Bromley.

The invoice, Government Exhibit 189, is also on the Stationery of Wayne L. Bromley, Attorney-at-Law,
1604 605 Headquarters Building, 2000 P Street, N. W.,
August 1, 1963, addressed to Mr. Morris Forgash, President, United States Freight Company, 711 Third Avenue, New York, New York.

“Monthly retainer, as per arrangement—\$500.00.”

By Mr. Bittman:

Q. After you received these, Mr. Sommer, from Carol Tyler, you sent these with your letter to Mr. Forgash in New York? A. Yes, sir, I did.

Q. Now Mr. Sommer, directing your attention, sir to approximately October of 1964, did you have a conversation with Mr. Baker? A. Yes, sir.

Q. Will you please state to the Court and the Jury where that conversation took place? A. The conversation took place in the Statler Coffee Shop and since we had seen a great many things in the newspapers concerning—

Q. Well, now that is a state of mind, Mr. Sommer. You only testify, sir, to what the conversation you had with Mr. Baker at that time was. A. I asked Mr. Baker how they were going to handle the income tax on the fee that he was getting—that they were being paid by Mr. Forgash, and Mr. Baker told me that he instructed Mr. Bromley to show the five hundred dollars as an income to him on his income tax, and as a wash-out, a pay-out to Mr. Baker of fees on the same form.

Q. Do you recall anything else said at that time? A. Not particularly.

Q. Was there anything mentioned about that they handled other deals in a similar fashion? A. Oh yes. Mr. Baker told me that that was the way they were handling all of their transactions.

Q. I see. Now, Mr. Sommer, when you talked to Mr. Baker, did Mr. Forgash retain Mr. Baker or Mr. Bromley, to the best of your knowledge?

Mr. Williams: Your Honor, I don't think Mr. Sommer is qualified to say what Mr. Forgash did. Unfortunately, Mr. Forgash can't speak for himself.

The Court: Sustained.

Mr. Bittman: I will withdraw the question.

No further questions. Thank you.

Cross Examination

By Mr. Kostelanetz:

Q. Mr. Sommer, in that October conversation, did Mr. Baker also tell you that he would pick up the income in his own tax return? A. Yes, sir, he did.

1606 Q. Now, that is the October 1964, at the Statler Coffee Shop, is that right? A. Yes.

Q. Now at the time that you spoke to Mr. Baker at the Capitol back in 1963 and you spoke with Mr. Bromley, I take it Mr. Baker identified Mr. Bromley as a lawyer and an associate, is that correct?

Mr. Bittman: I object to the question, Your Honor, assuming a fact not in evidence. Mr. Sommer testified he had a conversation with Mr. Baker and not Bromley. It is an improper question.

The Court: I will permit the question.

Mr. Kostelanetz: Would you like the question read back?

(The Reporter read the question back.)

The Witness: Yes, sir, that is correct.

By Mr. Kostelanetz:

Q. By-the-bye, at one point, after the retainer—I guess it was July or August 1963—did you have occasion to ask Mr. Bromley to make certain legal inquiries at the Justice Department, do you recall? A. I don't understand the question, Mr. Counselor.

1607 Q. I say, after August of 1963, do you recall an occasion when at the request of Mr. Forgash you had Mr. Bromley find out some facts about the General Anilyn matter at the Justice Department. A. I do.

Q. Mr. Bromley reported back to you, is that right? A. Not to me, Mr. Forgash.

Q. To Mr. Forgash? Thank you.

Redirect Examination

By Mr. Bittman:

Q. Now, Mr. Sommer, I believe you testified on Cross Examination that you requested Mr. Bromley to contact the Department of Justice in connection with some legislation the United States Freight Company was interested in, or was it Mr. Baker—

Mr. Williams: Your Honor—

Mr. Kostelanetz: We object. There was never any such testimony on cross examination, Your Honor.

The Court: Overruled.

The Witness: I don't recall exactly which one I had asked. Mr. Forgash had called me to get some information. I think I talked to Mr. Baker originally but Mr. Bromley was the one that reported back to Mr. Forgash.

By Mr. Bittman:

1608 Q. Were you present when Mr. Bromley reported back to Mr. Forgash? A. No, I wasn't but I was told by Mr. Forgash that this is what happened.

Q. But you weren't there? A. No, sir.

Q. Did you to the best of your recollection ever request Mr. Baker to contact the Department of Justice on behalf of Mr. Forgash?

Mr. Kostelanetz: Objected to.

The Court: Overruled.

The Witness: I don't believe so.

1615-F By Mr. Bittman:

Q. Now, Mr. Sommer, directing your attention to the period of time contemporaneous with your agreement with Mr. Baker about the five hundred dollar monthly fees, did United States Freight Company have any legislation pending? A. Not that I know of. The testimony you showed me took place before we had hired Mr. Baker.

That is why I wasn't answering your questions directly. That testimony in which I said I asked Mr. Baker to get a reading from the Justice Department as to how they felt about the so-called Freight Forwarders Bill was prior to the time that Mr. Baker had been retained by U. S. Freight.

Q. But there was also legislation in 1963, was there not?

A. When we hired Mr. Baker in August of 1963, the legislation which we were interested in had already been defeated. In other words, the Senate disapproved of the Bill in July. I mean in June, or July of that year. So that there was no legislation pending as far as I knew at the time that we had hired him.

• • • • •
1615-G By Mr. Bittman:

Q. Mr. Sommer, what personal knowledge do you have of anything that Mr. Bromley performed on behalf of United States Freight Company?

The Court: During the life of the retainer, Mr. 1615-H Sommer.

The Witness: None.

By Mr. Bittman:

Q. But you did have many discussions with Mr. Baker during this period of time, did you not, sir? A. Yes.

Q. About businesses on the Hill, did you not? A. No, sir.

Q. Did he introduce you to any Administrative Assistants?

Mr. Williams: It is not proper to lead the witness on redirect.

The Court: That is correct, Mr. Bittman.

The Witness: Mr. Baker had made a number of phone calls prior to the retainer, as my friend, to introduce Mr. Forgash because he was my client, to some administrative assistants, but not during the life of the retainer—

• • • • •

Whereupon,

Sidney Keith Linden

witness called by counsel for the Government, having been duly sworn according to law, was examined and testified as follows:

Direct Examination

By Mr. Bittman:

1615-I Q. Sir, would you please state your name? A. Sidney Keith Linden.

Q. Where do you reside, sir? A. 6113 Robinwood Road, Bethesda, Maryland.

Q. And what is your present business or occupation Mr. Linden? A. I am Washington counsel for Harvey Aluminum, and Vice President in charge of legal affairs for Harvey Aluminum Sales, Inc.

Q. Is their home office located in Torrance, California? A. Yes, it is. 19200 Southwestern Avenue.

Q. Mr. Linden, you know the defendant in this case, Robert G. Baker? A. I do.

Q. How many years approximately have you known him? A. I'd say several years.

Q. Now, directing your attention, Mr. Linden, to early 1964, did you have a conversation with Mr. Baker? A. Yes, I did.

Q. Would you please state when that occurred, who was present, and what was said to the best of your recollection?

A. Well, to the best of my recollection, the first conversation took place in the early part of the week
1615-J of January 6 of 1964. I was returning from lunch when I ran into Mr. Baker in front of my office building at 1001 Connecticut Avenue, N. W., and after exchanging pleasantries I apologized for having to dash off, to my office, because I was heavily involved in a major matter, and as I turned to go I said to him, "And I could sure use you, too," and I continued on into my office; and that terminated the conversation that day.

Q. Did you have a conversation with him subsequently, sir? A. Yes, the following day, Mr. Baker I think it was in the afternoon called upon me, and substantially the conversation went as follows: If you can use my services, I would really appreciate it. And I replied that I could use his services and while I wanted very much to use his services, I had been thinking about it, I knew of no way, in view of the wide publicity having been given the Congressional hearings on his case, that I could put his name on the retainer list. That every secretary, bookkeeper, anyone who would handle the vouchers would know who Mr. Baker was and it wouldn't take 30 days for it to be public, and the company would be involved in embarrassing publicity and for that reason only I hoped he understood why I could not even though I wanted to put him on the retainer list.

1615-K Subsequently, a couple of days later, I think it was during the same week, he came to see me again. At that time, he said to me, I have a solution to the problem. He said if you will retain Wayne Bromley, I can do the work, and that will eliminate the problem we discussed the other day. He said, "I worked out an arrangement with Mr. Bromley. You know him, don't you?" And I said I do not know him well. If at all. I know him casually, but I know he is connected with the National Coal Association in some way. I agreed that the arrangement seemed satisfactory to me, that I would want him for services in connection with a major industry controversy.

Q. Want whom, sir? Mr. Bromley or Mr. Baker? A. Mr. Baker. That I would want Mr. Baker's services in connection with a major industry controversy which I was handling at that time. I wanted his investigation and advice in connection with certain aspects of that controversy. For that kind of service, I told him I was willing to pay a retainer of a thousand dollars a month as long as the work continued. If that met with his satisfaction his retainer would commence when I received a statement or invoice from Bromley for the first month.

Q. Go ahead. A. As I recall, it was several days later. This could have been in the next week. He brought me a statement from Mr. Bromley for the first month's retainer, which I told him I would approve for payment and sent out to the home office and that all subsequent statements would be handled the same way. That is, sent to my office, I would approve them, forward them to the home office and have the checks returned to me.

Q. And subsequently, you received other invoices on the stationery of Wayne Bromley, did you not? A. I did, and I retained Mr. Baker up until November when we amicably terminated his services.

Q. After you would receive the invoice from Mr. Baker, on Bromley's stationery, would you send that to California? A. Yes, I would attach it to a little slip, on it was "Approved for payment." I would initial it and just put it in a pouch. We have a pouch which we forward all mail to the office in California.

Q. After you forward that to California, what was the next thing that would happen? A. I would receive a check back.

Q. You received 10 such checks following these similar procedures, is that correct? A. That is correct.

Q. What, if anything, did you do with these 10 1615-M checks when you received them? A. Gave them to Mr. Baker.

Q. Personally? A. Personally.

Q. I now show you, Mr. Linden, a series of Government Exhibits. I ask you to please briefly identify them and I ask if these are not the invoices which you received from Mr. Baker, in the normal course of this activity that you have described? A. I so recognize.

Q. Why don't you go through them one by one. A. You want me to identify them?

Q. Just by Government Exhibit Number. A. Government Exhibit 230, 231, 232, 233, 234, 235, 236, 237, 238, 239.

Q. Those are the invoices that you described, are they? A. Yes.

Q. Will you please describe very briefly the Government Exhibits starting with 240? A. 240. You want me to describe them?

Q. Describe the first one and go through the other ones rapidly. A. The 240 contains a white slip.

The Court: Keep your voice up so we can all hear it.

Mr. Williams, if at any time you can't hear the 1615-N witness, speak up. We want you to hear the witness.

The Witness: I have laryngitis. I am examining the Government Exhibit 240, which is a referral slip, which is printed from the Desk of Keith Linden, and it is addressed to Mr. Jack Ross who was the treasurer, and it says "Please forward to me for transmittal," and a rubber stamp saying, "Harvey Aluminum Sales, Inc., Washington Office," and "Approved for payment," and my initials.

By Mr. Bittman:

Q. Similarly, were the same procedures utilized in connection with Government Exhibit 241? A. Yes.

Q. 242? A. Yes.

Q. 243? A. Yes.

Q. 244? A. Yes.

Q. 245? A. Yes.

Q. 247? A. Yes.

Q. And starting with Government Exhibit 248, Mr. Linden, there are ten one thousand dollar checks 1615-O made payable to Wayne L. Bromley. The first one on Harvey Aluminum Sales, Inc. Now, did you receive all these 10 checks according to the procedure that you have previously testified to? A. Yes, sir.

Q. And all these 10 checks handed to Mr. Baker personally by yourself, is that right? A. That is my best recollection, yes, sir.

Q. This refers to Government Exhibit 248 through 257, inclusive, is that correct? A. Yes.

Q. You previously examined these in my office, is that correct? A. I have examined those in your office, yes, sir.

Q. Now, Mr. Linden, directing your attention, sir, to March or April of 1961 and continuing for two years, did you hold a position with the Senate Democratic Campaign Committee? A. Yes, sir, I did.

Q. What position did you hold? A. I held the position of Treasurer.

Q. Among other things was the function of the Senate Democratic Campaign Committee to receive contributions for Senatorial Candidates and then to make any and all disbursements that were necessary? A. Yes, the 1615-P purpose of the Committee was to raise funds for the campaigns of Democratic Senators and prepare any other campaign material they thought would assist in those campaigns.

Q. You were the treasurer? A. I was treasurer, yes, sir.

Q. Prior to March or April of 1961, who was treasurer of the Senate Democratic Campaign Committee? A. Mr. Baker.

Q. Was Mr. Baker, Mr. Linden, during the period of time that you were Treasurer, an officer of the Senate Democratic Campaign Committee? A. No, sir.

Q. Now, very briefly, Mr. Linden, and I appreciate you didn't keep these records personally, that they were kept by staff—What are the procedures generally followed by the Senate Democratic Campaign Committee, as they received contributions? What records are made and kept? A. As monies are received, a record is made of the date of the contribution, and the amount, and similarly when monies are paid out a record is made of each item by date, payee, and the amount.

Q. And also the name of the contributor? A. Yes, sir.

I said the name, didn't I? Yes.

1615-Q Q. Isn't it necessary, under the Federal law, Mr. Linden, for the Senate Democratic Campaign Committee to file records with the House of Representatives? A. Yes, sir.

Q. This is under the Federal Corrupt Practices Act?

A. This is under the Federal Corrupt Practices Act.

Q. As treasurer, was this your duty? A. Yes, sir.

Q. And did you file such records? A. I so filed, yes, sir.

Q. I now show you Government Exhibit 72 for purposes of identification, and ask you to the best of your recollection, those are true and correct copies of the reports which you caused to be filed? A. Yes, I recognize my signature.

Q. And you have previously examined those? A. I have previously examined them.

Q. (continuing) — those documents in my office, too, have you not? A. Yes.

* * * * *

1616 Q. Now, Mr. Linden, these records were prepared generally under your supervision and control, were they not, even though you didn't have personal knowledge of every entry? Is that correct? A. That is correct, they were—

Q. To the best of— A. —reported to me.

Q. To the best of your knowledge they were accurate at the time the entries were made and when they were filed with the Clerk of the House, is that correct? A. Yes, sir.

Q. You do not have recollection of all entries on that particular exhibit, do you? A. I have no independent recollection whatsoever of most of these entries here.

The system was to forward the bills and the contributions to me and I made a record of them, and
1617 recorded them and then prepared the reports and filed them.

Mr. Bittman: Your Honor, at this time I would like to introduce Government Exhibit 72 marked for identification into evidence as recollection past recorded.

Mr. Williams: No objection.

The Court: It will be received.

(Government's Exhibit No. 72 received in evidence.)

By Mr. Bittman:

Q. Now, Mr. Linden, to the best of your knowledge, does that exhibit, Government Exhibit 72 now in evidence, reflect all contributions made to the Senate Democratic Campaign Committee commencing September 7, 1962 to March 4 of 1963, inclusive? A. (Examining.)

The Court: What was the final date?

Mr. Bittman: March 4, 1963, Your Honor.

The Witness: September 7, 1962, last one here is dated December 28, 1962.

By Mr. Bittman:

Q. Now is there a second report—Mr. Linden, is there a second report there that goes from—A. Here.

1618 Q. Q. —January 1, '63 to March 4, 1963? A.

There is a—you are asking about contributions or disbursements?

Q. Contributions, sir, although— A. There were, starting January 11 through January 15, 1963.

Q. All right.

Now, directing your attention to October 31, 1962, does that report reflect a contribution by Robert G. Baker?

A. What date is that again, sir?

Q. October 31, 1962. A. (Examining.)

Yes, sir.

Q. What date and in what name and in what amount is that contribution listed on that report, sir? A. Listed as October 31, and the amount is \$1,000.

Q. That is in the name of Robert G. Baker? A. Robert G. Baker.

Q. Now, Mr. Linden, to the best of your recollection during the entire two years, 1961 to 1963, that you were treasurer of the Senate Democratic Campaign Committee,

how much cash, to the best of your recollection, was
1619 contributed to the entire committee? A. Cash?

Q. Yes, sir. A. Oh, very rough estimate would be between \$20,000 and \$30,000 in the form of cash.

Q. Now in connection with the general procedures that the Senate Democratic Campaign Committee followed, is it a fact that when cash was contributed the name of the donor would still be listed on that report before you?

Is that correct? A. Yes, sir.

Mr. Bittman: I have nothing further, Your Honor.

Cross-Examination

By Mr. Williams:

Q. Mr. Linden, taking you back to the conversation that you had with Mr. Baker. A. Yes, sir.

Which one, sir.

Q. Which I believe you fixed in January of 1964. A. My best recollection.

Q. Is that correct? A. I believe in January of '64.

Q. At that time Mr. Baker was no longer an employee of the Senate, was he? A. No, he was not. That's right.

1620 Q. He had terminated his employment at the Senate back in October of '63? A. This I knew well, sir.

Q. I understand your testimony to be that you met him casually on the street? A. Yes, we just accidentally met. I was coming back from—

Q. Excuse me, sir. A. I was just coming back from lunch at the time.

Q. You told him that you were working on an intra-industry problem, is that correct? A. That's right.

Q. At that time you acted in a representative capacity for Harvey Aluminum? A. Yes, sir.

Q. As you do now? A. As I do now, yes, sir.

Q. You said to Mr. Baker at that time, I think to use your words, "I sure could use your help." A. Yes, sir. Services, I think. Something to that effect.

Q. Services.

1621 It was thereafter that you had a conversation with him about the area in which you could use his services, is that not so? A. Yes, sir.

Q. And I think you fixed that, Mr. Linden, as the next day? A. Yes, I think he came back the next day.

Q. The fact is, Mr. Linden, you were engaged on behalf of your company on a matter regarding bauxite deposits in the Republic of Guiana, isn't that so? A. Yes, sir.

Q. There was an intra-industry dispute going on between your company and the other aluminum companies? A. Yes, sir.

Q. It was in the frame of reference of that dispute that you wished to hire Mr. Baker? A. That's right, sir.

Q. Did you tell him that, sir, on that day after you had your first conversation with him? A. I can't remember whether it was on that day or the day that we agreed upon the retainer of Mr. Baker through Mr. Bromley, yes, sir.

Q. But in any event, in either one of those two conversations in your office, you told Mr. Baker that on reflection you couldn't hire him on a retainer basis because of publicity that he had received? A. That's right, sir. That's right, sir, just the publicity.

Q. You didn't want it to appear in the press that you had retained him, is that so? A. That is correct, sir.

Q. After you told him this, Mr. Baker suggested that you retain Mr. Bromley, is that so? A. Correct.

Q. And you agreed, Mr. Linden, that you would issue checks on behalf of Harvey Aluminum or have checks issued on behalf of Harvey Aluminum to Mr. Bromley each month? A. Yes, I agreed that I would approve Mr. Bromley's vouchers and statements for payment.

Q. Now did Mr. Baker during the ensuing months perform services for Harvey Aluminum? A. Yes, he did.

Q. Were they valuable services? A. I considered them so.

Q. Did you approve invoices that were sent in for \$1,000 per month? A. Yes, I did.

1623 Q. And you in turn turned over the Harvey Aluminum checks to Mr. Baker? A. I did, sir.

Q. That relationship, I believe, came to a termination at the end of the year of 1964? A. I think it was November, '64, sir.

Q. By way of summary, without going into all the exhibits, Mr. Linden— A. Yes, sir.

Q. I believe that there is a total of ten checks involved here— A. Yes, sir.

Q. Is that not correct? A. Correct, sir.

Q. For a total of \$10,000? A. Yes, sir.

Q. Paid in 1964— A. 1964—

Q. —to Mr. Baker.

And each of the invoices incident to those checks has your approval. A. I don't have them here, sir.

Q. Beginning, Mr. Linden, with exhibit No. 239, 1624 those little memos—240, I am sorry—those little memos constitute your transmittal to the Harvey Aluminum Company. A. Yes.

Q. Is that correct? A. That is correct.

Q. In some of the instances in which you transmitted the invoice to Harvey Aluminum, you said to Harvey Aluminum, to whatever officer it was with whom you corresponded: Please send check to me for transmittal to Mr. Bromley. A. Yes.

Q. Isn't that right? A. In some cases, yes, sir.

Q. Now— A. In some cases I just put the approval stamp on and sent it out.

Q. That's what I was about to ask you next.

With respect to 242, 243, there is no message on there. It is just an approved for payment slip, is that correct? A. That is correct, sir.

I am authorized to retain local counsel and I can approve their payment and it is respected by the comptroller.

Q. Now at the end of 1964 when you terminated 1625 Mr. Baker, it was because there was no more work to be performed in the area in which his services were engaged, is that not so? A. That is correct, sir.

Q. The fact is you didn't disclose to Harvey Aluminum that it was Mr. Baker who was performing the services until afterwards? A. Afterwards, yes, sir.

Q. And during the year 1964, Mr. Baker periodically reported to you? A. Oh, yes, sir.

Can you hear me? I am sorry.

Q. It was important, was it not, Mr. Linden, that Mr. Baker's identity as working for you and Harvey not be known to your competitors by reason of the nature of the work in which he was employed? A. That could be an additional factor, sir, yes, sir.

Q. That was an additional factor? A. The publicity was the first concern, and the next would be that it not be disclosed to our competitors that he was retained by us.

Q. And at that time you, as counsel for Harvey Aluminum, were interested in retaining a contract that 1626 you had with the Republic of Guinea for certain bauxite deposits, isn't that so? A. I did not hear your question, sir.

I think you used the wrong word. I was not seeking a contract, sir.

Q. Interested in retaining? A. Yes, sir.

Q. I didn't say obtain. A. I thought you said obtain.

Q. I said retain. A. Retain.

Q. Contract that Harvey Aluminum already had. A. That's right, sir.

Q. You competitors were trying to overturn that contract, weren't they? A. Yes, sir.

Q. You wanted to retain it. A. Yes, sir.

Q. Now, Mr. Linden, the last exhibit which was handed to you as Government's Exhibit No. 72, which you identified, I believe, as a record which you filed with the Clerk of the House of Representatives? A. Yes, sir.

Q. I think that it was represented that this 1627 represented your past recollection recorded? A. Yes, past recollection recorded.

Q. Now, you served, as I understand it, as director of the Senate Democratic Campaign Committee in the years 1961 and '62? A. No, sir.

Q. You did not? A. No, sir.

I did not. I was treasurer.

Q. You were treasurer? A. Yes.

Q. You were subordinate to the director, were you?
A. Yes.

Q. Who was the director? A. I think there were two directors. It started off with Mr. Fleisher, who was the first director, and—

Q. Jack Fleisher, was that? A. I think it was Jack Fleisher, and then it became Mr. Alwyn Matthews.

Q. Mr. Matthews succeeded Mr. Fleisher in '63, did he?
A. I can't give you the exact date. I would say it was

'62.

1628 Q. '62? A. Perhaps '61 even. I just don't recall.

Q. Now, I call your attention, Mr. Linden, to the exhibit which has been received.

You list under disbursements in summary form the amount of disbursements between January and March, '62, is that right? A. Yes.

Q. Then you list also in summary form, without identifying the disbursements, those between March and June of '62? A. Yes, sir.

Q. And the same with respect to June through September '62.

Then you begin— A. That is because the statute required us to set forth in sort of a cumulative report bringing everything up to date.

Q. Then you began to make, on September of '62, a detailed itemization of each disbursement that was made?
A. Yes.

Q. Is that correct? A. Yes.

Q. Some of those disbursements were to campaigns
1629 and some were for expenses, I take it, of the committee, is that right? A. Yes.

Q. A good number of them were for expenses. A. Yes, sir.

Q. Is that correct? A. That's right.

Q. That list of expenditures runs over through the end of the year 1962, specifically through December 26? A. Um, hum.

Q. And it totals \$325,594.08. A. That's what I read, sir.

Q. Now, behind this list of disbursements, Mr. Linden, you have, do you not, a list of contributions? A. Yes, sir.

Q. First of all, you have lumped in one sum those contributions made from January to March, '62. A. Yes, sir.

Q. And those from March to June, '62? A. Yes, sir.

Q. And those from June to September, '62? A. Yes.

There were previous quarterly reports filed.

1630 Q. Then you begin, do you not, Mr. Linden, a detailed identity of each contribution received during the months of September, October, November and December? A. Yes, sir.

Q. Right.

Now some of these contributions which are listed are very substantial contributions and identified as coming from other committees, is that correct? A. Yes, sir.

Q. For example, there are some \$40,000 from the Democratic National Committee, two of them on the first page here of contributions, is that right? A. (Examining)

There are two, one for—

Would you get me a ruler, so I can be sure?

Q. I think it is \$40,000, Mr. Linden.

The reporter wants you to talk into the microphone and maybe if I pull it just a little this way, let's see. A. Yes, \$40,000, in this instance. Here is Democratic National Committee, Washington, D. C.

The Court: Mr. Linden, keep your voice up so that the ladies and gentlemen of the jury can hear what you say.

The Witness: December 10, Democratic National
1631 Committee, Washington, D. C., \$5,000, and then one on December 12 for \$40,000.

By Mr. Williams:

Q. Now outside of those contributions after October the 19th, and I refer specifically to the Democratic National

Committee contributions, the only substantial one is from the Democratic State Committee of Rhode Island, is that right? A. Yes, sir.

Q. That is— A. \$21,500.

Q. And the rest of them are small amounts, are they not? A. Yes.

Q. 50, 20, etc. A. Yes.

Q. \$50 and \$20, I mean. A. \$50 and \$20, \$35.

Q. Now, I take you over to October, the period represented on the next page, which is October 22, 1962, and in that whole list of checks there is none—or in that list of contributions, there is none in excess of \$200, is there?

A. (Examining.) \$250.

1632 Q. Most of them under \$100? A. Yes.

Q. Then over on the next page of contributions, going down hurriedly until we get to October the 26th— A. Yes.

Q. All of the contributions are \$200 or less, are they not? A. Yes.

Q. Would you take a look and see if my— A. Yes, up to October, through October 22.

Q. Some of them are \$25, some \$6, \$7, \$60, \$100 checks. A. Yes, sir.

Q. Now beginning on October 26, there are a series of checks, are there not, sir, in fairly substantial amounts?

A. Yes. I don't know whether they were checks or whether they were cash.

Q. I see.

From your experience as the treasurer of the Democratic Senate Committee, Mr. Linden, can you tell the Court and the jury whether or not it was often the practice that a contributor would make his contribution in some one else's name? A. I can't tell you whether or not it was the practice. I have heard of it, but I have no independent—

1633 Q. In other words— A. Recollection. It is a practice that could happen.

Q. For example, you, Mr. Linden, are listed here on October 26 as making \$1,000 contribution. A. Yes.

Q. Did you make that yourself? A. Yes.

Q. That wasn't made through you? A. No, sir, that is—

Q. If a contribution was made in the name of any of these persons listed here beginning on the page headed October 26, but not by the person himself, you would have no knowledge of that? A. That is correct, sir.

I would receive envelopes with checks and cash and make a record. This record is a matter of fact as they were received.

Q. Right. A. And there was no indication.

Q. I call your attention to the fact, for example, that beginning on October 26, the contributions appear to be much higher in amount than theretofore.

1634 Is that not a fact? A. Yes, as it gets closer to the campaign.

Q. For example, on October 26, there were ten contributions listed seriatim, in a row, each of which is a \$1,000 one, is that correct? A. That is what I read, sir.

Q. One of those is Mr. Baker's, is that correct? A. That's right, sir. Right here, sir.

Q. Yes.

In fact, going on down through this page which runs from October 26 to December 11— A. Um, hum.

Q. The contributions are for the most part \$1,000 or over, are they not? A. Yes, they are. \$500, \$1,000—denominations of \$1,000 and \$1,500 I read here.

Q. Now is it your best recollection as treasurer, Mr. Linden, that you received as much as 75 percent of the aggregate in dollars of your contributions between mid-October and election? A. I haven't made that computation.

Q. Would you say that that was a fairly accurate rough estimate? A. Well, I don't see how I can without
1635 making some computations.

Q. Well, from looking at that exhibit, which is in evidence. A. (Examining)

Q. I am talking apart now from the contributions that came from the National Committee and from the state

committee, Rhode Island. A. Well, I can just tell you approximately how much we collected in toto for the two-year period.

Q. That is listed there under statistics. A. Now I don't know whether all of it came in this period or not, sir.

You say 75 percent of it, sir. I don't know.

Q. I see.

Now, Mr. Linden, contributions that were made to Senators running for election or to any committees formed by friends of Senators running for election would not go through your fund, would it? A. Are you asking me whether direct contributions can be made by people to Senators' campaigns without going through—

Q. Yes. A. Yes, sir, it can be done.

1636 Q. Well, if in fact that happened in 1962 or 1960 or 1964, there wouldn't be a report filed by the Senate Democratic Committee with the Clerk of the House with respect to that there, would there? A. No, I would not file those. I wouldn't know about any of those.

Q. The contributions that are listed on what has been received in evidence as Government's Exhibit No. 72, are those contributions which are made by individual contributors to the committee known as the Senate Democratic Committee. A. Campaign Committee.

Q. Campaign Committee. A. Yes, sir.

Q. And if someone wants to designate or earmark where he wants his funds channeled he is entitled to do that? A. It depends on the policy of the chairman, sir.

Q. I see. A. These are ad hoc committees that are formed each two years and it is the policy of the chairman that prevails. Some chairmen permit earmarking. Other chairmen do not.

Q. Well, is it your testimony, Mr. Linden, that it is basically within the discretion of the chairman and
1637 his committee members how the funds received by the Democratic Senate Campaign Committee will be disbursed? A. Yes, sir.

Q. They can give it to whomsoever they choose? A. Yes, sir.

Q. And that was true in 1962 when you served? A. Yes, sir.

Q. Now are committees formed by supporters of candidates for the Senate required to list contributions and disbursements with the Clerk of the House of Representatives? A. Well, I am not familiar with all of the laws, but I think each candidate is required to file a report. Perhaps even a committee is required to file a—

Q. A candidate has to file a report as to the moneys that he personally receives and how he spent it? A. Yes, that is my recollection—

Q. That doesn't apply to committees for candidates, does it? A. I don't think it does.

Q. When you undertook to make the report that you made listing disbursements and contributions, you didn't undertake any breakdown as between what expenditures were made by the committee and what contributions 1638 went to what candidates? A. No, we just took the checkbook right in order, and—

Q. You just showed how much you took in—A. And how much we paid out.

Q. You did it on a simple "ins and outs" basis, is that correct? A. Yes, sir.

Q. Then in 1963, as I understand it, I say in 1963, as I understand it, you terminated as treasurer and that duty was assumed by someone else? A. Correct.

I think it was April 1, 1963.

Mr. Williams: I have no further questions.

Redirect Examination

By Mr. Bittman:

Q. Very briefly, Mr. Linden.

Other committees located in Washington, D. C., also file with the Clerk of the House under the Federal Corrupt Practices Act, do they not? A. Other committees?

Q. Yes. National Democratic— A. National Democratic—

1639 Q. They file, too. A. Yes, sir.

Q. They utilize the same procedures because it is set down by statute—

Mr. Williams: Your Honor—

Mr. Bittman: —is that—

Mr. Williams: —again this has the vice of being leading on direct.

Mr. Bittman: I don't think those are leading.

The Court: Yes, Mr. Bittman.

Mr. Bittman: All right, Your Honor.

By Mr. Bittman:

Q. To the best of your knowledge, Mr. Linden, do other committees file similarly to what you do? A. I can't say—I have never seen their form so I can't say whether they file similarly like I do. If you mean by similar, do they have to file reports, I would say yes from common knowledge.

Q. To the best of your knowledge you followed the statute when you filed those reports, did you not? A. Yes, the statute requires the date, the name of the donor, and the amount, and you are given the same thing with reference to expenditures. You report the date and the amount you spent and to whom.

1640 Q. Now, also under the Federal Corrupt Practices Act, to the best of your knowledge, when individual contributions are given to Senators, they file a similar report with the Secretary of the Senate, do they not? A. Yes. I can say—Senators, I believe, file their own reports with the Secretary of the Senate and the House members with the Clerk of the House.

Q. Now, Mr. Linden, during the period of time in which you were treasurer of the Senate Democratic Campaign Committee you knew Mr. Robert G. Baker, did you not? A. Yes, sir.

Q. Now other than the record that appears thereon of a \$1,000 contribution by Mr. Baker on October 31, 1962, do you have any knowledge whatsoever of any other contribution made by Mr. Baker either on behalf of himself or others? A. I have no independent recollection of my own of any contribution being made by Mr. Baker, sir.

Q. Thank you.

1642 Whereupon

Fred M. Miller

was called as a witness by the Government and having been duly sworn, was examined and testified as follows:

1646 Q. Now, Mr. Miller, were you requested to conduct any examinations in connection with this case? A. Yes, sir, I was.

Q. I would now like to show you, Mr. Miller, certain exhibits, and all these exhibits are in evidence, Government Exhibits 281, 282, and 283 for identification, and also I would like to hand to you at this time Government
1647 Exhibits 223, 224, 225, 226, 254, 255, 257 and 196, and I ask you in connection with those exhibits which I have just handed to you whether or not you conducted an examination. A. Yes, sir, I have.

Q. Now, Mr. Miller, did you compare certain of those exhibits with others, and I direct your attention to a comparison between Government Exhibits 281, 282, and 283, with the other exhibits which I have handed to you? A. Yes, sir.

Q. Would you please state to the ladies and gentlemen of the jury what, if anything, you did about making this comparison? A. In making a comparison like this, my first objective is to determine if the signatures or the endorsements were tracings or in any way if they were accomplished by use of some instruments which would indicate that they were a certain type forgery.

I then found that no particular instruments were involved other than the normal pen, and then I made a side-by-side comparison of the handwriting on these exhibits which were given to me as known standards, namely, 281, 282 and 283.

This involves a side-by-side comparison of each individual letter in an effort to determine microscopic peculiarities in the writing, keeping in mind that a person never writes exactly the same any two times, but nevertheless a person skilled in the art of penmanship will carry forth or always produce certain characteristics throughout his writing.

Q. Now, Mr. Miller, in connection with those exhibits, what conclusion did you reach when you compared the knowns against the so-called unknowns? A. Well, I reached the opinion that they were written by the same person.

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1697 Now, these are the reasons primarily for my conclusion, my opinion that these "Wayne L. Bromley" signatures and/or endorsements were not written by Wayne L. Bromley.

(Whereupon the witness resumed the stand.)

Q. Now, Dr. Miller, I hand you Government's Exhibits 223, 224 and 225, which are United States Freight Company checks made payable to Wayne L. Bromley, which all bear the purported endorsement of Wayne L. Bromley on the back of them.

Did you also make a comparison, Dr. Miller, of those four endorsements and those four exhibits with the known exemplars of Carol Tyler? A. Yes, sir, I did.

Q. Have you reached an opinion with respect to that? A. Yes. It is my opinion that the endorsements, "Wayne L. Bromley," on Exhibits 223, 224 and 225 and 226 were also written by Nancy Carol Tyler.

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